

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 44215  
Docket No. SG-45392  
20-3-NRAB-00003-190120**

The Third Division consisted of the regular members and in addition Referee Patrick Halter when award was rendered.

**PARTIES TO DISPUTE:** ( **(Brotherhood of Railroad Signalmen**  
**(Kansas City Southern Railway Company**

**STATEMENT OF CLAIM:**

**“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Kansas City Southern:**

**Claim on behalf of J.M. Gutierrez, Jr., for any mention of this matter removed from his personal record, account Carrier violated the current Signalmen’s Agreement, particularly Rule 31, when it issued the harsh and excessive discipline of a formal reprimand against the Claimant, without providing a fair and impartial investigation and without meeting its burden of proving the charges in connection with an investigation held on September 28, 2017. Carrier’s File No. 2017-0493. General Chairman’s File No. 17-070-TXMX-185. BRS File Case No. 15981-KCS. NMB Code 106.”**

**FINDINGS:**

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

The Claimant is a Signal Maintainer with approximately two (2) years of service at the time of the incident giving rise to the claim.

On September 2, 2017, the Claimant was assigned to fill up a generator used in powering a bungalow near Milepost 158.27 at Navigation Boulevard in Corpus Christi, TX. Upon arriving at the bungalow, the Claimant noticed that commercial power had been restored. The Claimant unhooked the generator and hooked the breaker to the commercial power. While performing this hook-up, the Claimant did not wear gloves given the tight confines and the small screws he would tighten. As he was tightening a screw he held with his right hand while using a screwdriver held in his left hand, a corroded power strip came loose and was close in proximity to another power strip that it caused an arc which resulted in the Claimant receiving burns on three (3) fingers.

The Carrier charged the Claimant with “failing to properly perform his duties in a safe and proper manner by failing to wear proper Personal Property Equipment (PPE)”. Following an investigative hearing the Carrier assessed the Claimant a Letter of Reprimand for violating Item G under KCS Safety Rules GS-2 – Clothing and Personal Protective Equipment (PPE):

“G. Protective gloves are required when the potential for chemical or physical injury to the hand exists, including while operating switches and derails and when performing tasks involving cars or locomotives. Protective gloves must also be worn as required by training and/or other instructions.”

The Organization filed a claim which was handled in the usual manner on-property including presentation to the Carrier’s highest official designated for this matter. Following a conference where the parties’ positions remained unchanged, the Organization referred this claim to the Board.

KCS determined that the Claimant violated Safety Rules GS-2, Item G and assessed him a Letter of Reprimand. Since Item G is directed towards transportation employees, the Organization refers Item L which states “refer to Appendix B for additional information regarding PPE for Engineering and Mechanical Employees”.

Appendix B describes the type of glove that may be required for certain duties. Examining “Electrical Hazard”, the letters “PR” - - possibly required based on task and materials - - are associated with the leather palm glove. This type of glove for the task performed by the Claimant was not mandatory but “possibly required based on task and

materials". In other words, the wearing of gloves was left to the Claimant's determination.

Aside the leather material on the palm of the glove, the remainder of the glove is fabric. To conclude that the Claimant would not have endured 3 burned fingers had he worn the leather palm glove (the Carrier's position) is problematic given that most of the glove was comprised of exposed fabric. Furthermore, the Carrier viewed the Claimant's culpability only through Item G and did not consider Item L directed at mechanical and engineering employees.

Having considered the record established by the parties in this proceeding, the Board finds that the Claimant did not violate Item G because that item is focused and directed at transportation employees. The Carrier's decision that the Claimant violated Item G when it knows the Claimant is not a transportation employee is an arbitrary decision showing an abuse of discretion. Thus, the Letter of Reprimand is harsh and excessive discipline in violation of Rule 31 - Discipline and Investigations. Thus, the claim will be sustained and the requested remedy granted.

**AWARD**

Claim sustained.

**ORDER**

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division**

Dated at Chicago, Illinois, this 30th day of September 2020.