

PUBLIC LAW BOARD NO. 2774

Award No. 166

Case No. 166

PARTIES Brotherhood of Maintenance of Way Employees
TO and
DISPUTE: Atchinson Topeka & Santa Fe Railway Co.

STATEMENT "1. Was the Carrier's decision to dismiss Welder J. A.
OF CLAIM: Kreipe and to assess Welder Helper W. F. Courseh's
personal record with thirty (30) demerits without
a fair and impartial investigation in violation of
the current Agreement, unjust and an abuse of
discretion?
2. That each Claimant's record will now be clear of
all charges and no reference thereto made in the
future with Claimant Kreipe being restored to
service with seniority and all other rights
restored unimpaired and compensation for all wage
loss suffered and expenses as a result of the
violation referred to above."

FINDINGS

Upon the whole record, after hearing, the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

On February 14, 1986 Claimants herein "assigned to weld a frog" in a switch in the vicinity of Pauline, Kansas. They got permission from the operator, proceeded to the location and began work. At approximately noon, the two Claimants were required to clear the

track to permit a work train to proceed past that location. After lunch, Mr. Kreipe contacted the work train by radio and was informed by the engineer that the train was proceeding west to do its work in the vicinity of Osage City. Mr. Kreipe informed the engineer that he was going to set his truck on the track east of the train in the Pauline yards to work on the switch in question. The engineer indicated that he understood the message. After the train completed its work in Osage City and was returning eastbound to Topeka when it struck the welding truck used by the two Claimants herein at approximately 2:40 p.m. at the east end of the yard. The accident resulted in almost total destruction of the welding truck which was worth approximately \$60,000. No one was injured. Subsequently, the two Claimants received a letter indicating that a formal investigation would be held involving the accident and following the investigation, Mr. Kreipe was dismissed and Mr. Courseh was assessed 30 demerits.

There is no question but that the two employees were guilty of dereliction of duty in that they did not adequately protect their vehicle and themselves in the course of their work day. This was freely admitted at the investigation by both employees. However, both employees indicated that they had worked in the same fashion with apparent knowledge by Carrier officials for many years. In fact, Mr. Courseh indicated that he had operated in exactly the same fashion and had seen other welders operate in this fashion for thirteen to fourteen years prior to the accident. Both men

admitted, however, that the protection provided was not adequate under all the circumstances and, furthermore, that they had many options to exercise with respect to protection, but none of them were used under the rules.

From the Board's vantage point, there is no doubt but that the two employees were guilty of violation of Carrier's rules. However, in view of the fact that the type of protection which they had indulged in on the particular day had been accepted on a de facto basis by certain Carrier officials over a long period of time, mitigates against the severity of the discipline accorded the two men. For that reason, Mr. Kreipe will be reinstated to his former position with all rights unimpaired, but will receive no pay for time lost. His time out of service would constitute a disciplinary lay-off. Mr. Counsell will have his demerits reduced from 30 ^{to} 20 because of the particular circumstances.

AWARD

The discipline accorded the two Claimants was inappropriate under all the circumstances. Mr. Kreipe will therefore be reinstated to his former position with all rights unimpaired but without compensation for time lost; his time out of service will constitute a disciplinary lay-off. Mr. Counsell will have his demerits reduced to 20 from 30 because of the particular incident.

ORDER

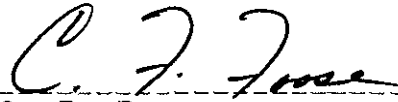
Carrier will comply with the Award herein within 30 days
of the date hereof.



I. M. Lieberman, Neutral-Chairman



G. M. Garmon
Carrier Member



C. F. Foote
Employee Member

Chicago, Illinois
July 12, 1988