

PUBLIC LAW BOARD NUMBER 3566

Award Number: 8

Case Number: 8

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

And

BURLINGTON NORTHERN RAILROAD COMPANY

STATEMENT OF CLAIM:

Claim in behalf of Welder Jessie Bledsoe, requesting that Mr. Bledsoe be paid at his respective rate of pay for time lost and that all charges be removed from his service record as provided for under Rule 91(b) (6).

FINDINGS:

On September 15, 1982, Claimant was supervising Welding Gang 389. Claimant had been instructed by Roadmaster D. McCafferty to weld track on that day. McCafferty visited the job site approximately 4-1/2 hours into Claimant's shift and discovered that no welds had been made by the gang on that day. McCafferty then removed Claimant from service for insubordination. Claimant received a two-day actual suspension for "allegedly not making welds as instructed on the duty shift of September 15, 1982, near Crystal City, Missouri."

A hearing was held in order to investigate the charge against Claimant. On the basis of the evidence adduced during the investigation, Carrier

determined that Claimant had failed to perform his duties as charged and that the discipline assessed against him was justified. The Organization filed a claim protesting Carrier's actions and requesting that Claimant be compensated for all time lost and that all charges be removed from his service record. The claim was denied at all levels of appeal on the property, the Organization then submitted the matter to this Board for resolution.

The issue to be decided in this dispute is whether Claimant was suspended for just and reasonable cause, and if not, what should the remedy be.

At the hearing, ample evidence in the form of testimony and exhibits was introduced to show that the Orgotherm welding process can be very dangerous if moisture comes in contact with the crucible ("pot") or the mold into which the weld is poured. On the date in question, the sky was overcast and the humidity was in the 70% range. Claimant testified that he had not made any welds on that date because he was worried that rain might have begun to fall after the welding process was started, thus causing a dangerous situation. In its correspondence on the property, Carrier indicated that Claimant had wrongly failed to make welds on September 15, 1982, because it did not in fact rain on that day. However, the question here is not whether it was actually safe or unsafe to perform welds on that date; rather, the test is whether Claimant reasonably believed that it was unsafe to make pot welds under the circumstances. The essence of Claimant's testimony was that, based on his experience, he felt that it was unsafe to make welds when rain was threatening. There is no evidence in the record to refute Claimant's assertion. The fact that

Claimant made pot welds on cloudy days in the past is not dispositive, since there is no evidence that he had done so when he thought there was a strong likelihood of rain. Likewise, there is no evidence that Claimant was "hiding behind" the safety excuse in order to avoid working. The uncontradicted testimony of Claimant and the other members of his gang was that they had performed other work during the afternoon in question. Since Claimant was apparently willing to work, there is no reason to believe that Claimant failed to make the welds for any reason other than he felt it was unsafe to do so.

For the reasons stated above, it is the opinion of this Board that Claimant reasonably believed that pot welding would be unsafe on September 15, 1982, and that Carrier therefore did not have just and reasonable cause for assessing discipline against him. Accordingly, the claim is sustained.

AWARD:

Claim sustained. Carrier shall compensate Claimant for all pay lost as a result of his suspension less compensation from outside employment; and shall remove all evidence of the charge from Claimant's service record.

Nicholas Kuma
Neutral Member

W. H. [unclear] [unclear]
Carrier Member

M. A. Christie
Organization Member

Date:

February 1, 1985