

PUBLIC LAW BOARD NO. 6394

AWARD NO. 38

Parties to Dispute:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
(CONSOLIDATED AND PENNSYLVANIA FEDERATIONS)**

AND

NORFOLK SOUTHERN RAILWAY COMPANY

Statement of Claim:

Claim on behalf of O. L. Lewis for reinstatement to service with all rights and privileges and pay for all time lost as a result of his dismissal from service following a formal investigation held on April 1, 2008, for his improper performance of duty as an Electric Welder and his violation of Safety and General Conduct Rule N in that while instructing a co-worker how to weld on a frog on March 12, 2008, he failed to properly protect his eyes from exposure to a welding arc and waited until March 13, 2008, to report that he had incurred a flash burn for which he received medical treatment on March 13, 2008.

(Carrier File MW-HARR-08-04-LM-160)

Upon the whole record and all the evidence, after hearing, the Board finds that the parties herein are carrier and employee within the meaning of the Railway Labor Act, as amended, and this board is duly constituted by agreement and has jurisdiction of the parties and subject matter.

This award is based on the facts and circumstances of this particular case and shall not serve as a precedent in any other case.

Claim disposed of as follows:

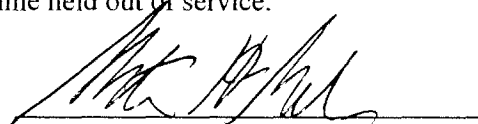
For some time prior to March 12, 2008, Claimant had been training his Welder Helper on welding, on a scrap frog that had been placed off track under a bridge. On March 12, Claimant had the Welder Helper weld on live track. This was the second time the Welder Helper had welded on live track. Claimant attempted to take the track out of service but the Dispatcher declined his request. Instead, a 10 mile per hour slow order was administered and Claimant served as Watchman/Lookout for the Helper. To serve as Watchman/Lookout, Claimant had to wear clear safety glasses instead of the full face shield or tinted glasses that are worn while welding which protect against a flash burn.

Claimant positioned himself to perform his lookout duties. Every few beads the Helper would stop and Claimant would signal him. Then, while continuing to watch for train traffic, Claimant would inspect the Helper's work and instruct him as to what to do next. However, the Helper refused Claimant's instruction to remove his welding shield, insisting that he could hear Claimant's instructions with the shield on. Apparently, there was a miscommunication because at one point Claimant looked away for a few seconds and the Helper struck an arc which Claimant caught a glimpse of when he looked back at the Helper. Claimant testified that he "felt a darkness for a short period of time." However, he did not report the matter to supervision.

At 8:30 p.m., while at home, Claimant experienced pain in his eyes. He called his primary care physician and advised that he had come in contact with an electric welding arc earlier that day. The doctor advised Claimant to go to the emergency room. At the emergency room, Claimant was diagnosed with a flash burn and prescribed eye ointment and advised to be off work for two days, but Claimant refused the ointment because he wanted to avoid having to report the injury. Claimant finished at the emergency room at 3:00 a.m. He finally reported the injury to his Supervisor at 8:00 a.m.

There is no question that Carrier proved the charges by substantial evidence. Claimant placed himself in a vulnerable position by attempting to simultaneously serve as lookout and instruct the Helper and inspect his work. Moreover, Claimant continued to keep himself in a vulnerable position even though the Helper failed to follow his instruction to remove his welding shield while Claimant was instructing him. Claimant's negligent disregard for safety left him vulnerable to exactly what happened, coming in contact with a welding arc and experiencing a flash burn to his eyes. Furthermore, the moment it happened, Claimant experienced darkness but he chose not to report the incident to supervision. Instead, because his vision cleared shortly thereafter, he went on working hoping that there would be no further symptoms. However, Rule N makes clear that an employee must report an injury "before leaving Company premises," not hope that the matter will go away.

Claimant's misconduct is extremely serious. Claimant record is far from exemplary. Claimant must learn that he is to obey all rules, that he must take responsibility for his own safety and that he is not to take it upon himself to decide when he should comply with reporting requirements and other rules. However, considering Claimant's 30 years of service, we shall afford him one last opportunity to bring his conduct into conformity with Carrier's rules and common sense. Claimant shall be reinstated to service with seniority unimpaired but without compensation for time held out of service.



M. H. Malin
Chairman and Neutral Member



J. Dodd
Organization Member



D. L. Kerby
Carrier Member

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