

In the Matter of the Arbitration Between:

BURLINGTON NORTHERN SANTA FE

and

Case No. 3

Claim of S. T. Volpe

Formal Reprimand -

Failure to Follow

Track Welding Rules

BROTHERHOOD OF MAINTENANCE OF WAY

EMPLOYEES DIVISION

STATEMENT OF CLAIM: Claim on behalf of Grinder Operator S. T. Volpe requesting removal of a Formal Reprimand with a one-year review period from his record with seniority, vacation and all other rights unimpaired, and that he be made whole for all time lost as a result.

FINDINGS OF THE BOARD: The Board finds that the Carrier and Organization are, respectively, Carrier and Organization, and Claimant an employee, within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted and has jurisdiction over the parties, claim and subject matter herein.

The Carrier and Organization are Parties to a collective bargaining agreement which has been in effect at all times relevant to this dispute, covering the Carrier's employees in the Maintenance of Way craft. The Board makes the following additional findings.

Claimant has been employed by the Carrier since March 9, 1977. On July 12, 2011, at about 8:30 a.m., Claimant was assigned to work on the Chillicothe Sub at MP 173.6. At that time, Claimant used a hammer to strike a piece of fatigued metal, rather than correct the problem by use of an air arch and grinding only. He was injured as a result, requiring five stitches and a tetanus shot.

The Carrier convened an investigation at which the above evidence was adduced. Based on the record, the Carrier found Claimant in violation of Track Welding and Procedure Manual Rule 11.4.2 (Manganese and Rail Steel Preparation for Welding) and assessed him a formal reprimand.

The Organization protested the discipline, which the Carrier denied on appeal. The Claim was progressed on the property on an expedited basis, up to and including the highest designated official, but without resolution. The Organization invoked arbitration, and the dispute was presented to this Board for resolution.

POSITIONS OF THE PARTIES: The Carrier argues that it met its burdens to prove Claimant's violations of the Rules and the

appropriateness of the penalty. It asserts that the facts and testimony presented at the investigation make it clear that Claimant used a tool - a hammer - that he should not have used and was injured in consequence. Claimant admitted at hearing that he had not complied with the Rule. BNSF contends that, when an employee admits guilt, there is no need for further proof.

With respect to the penalty, BNSF maintains that the discipline imposed is appropriate and that leniency is not within the Board's authority.

The Carrier urges that the claim be denied as without merit.

The Organization argues that the Carrier failed to prove Claimant's fault beyond a shadow of a doubt. It asserts that Claimant did not normally use a hammer to strike metal and that he was unaware that the Carrier had recently changed the procedures. BMWE questions why, if employees are not supposed to use hammers that are designed to strike metal, the Carrier issues such hammers to Welders as a tool to use but has a rule preventing them from using the hammer as it is designed. In addition, although it acknowledges that Claimant has taken welding tests, it contends that he had never been tested on the Track Welding Manual or the listed rule.

BMWE asserts that the purpose for an Investigation is to determine the facts. It maintains that the Carrier failed to produce any evidence that Claimant had been trained on the changes in the procedures. It contends that, because Claimant was not aware of the procedures being changed, the Carrier is to blame for Claimant's violation. BMWE asserts that, even if such evidence were found, the discipline is excessive. The Organization maintains, therefore, that the discipline is extreme, unwarranted, unjustified, and a flagrant abuse of the Carrier's rules.

The Organization urges that the Claim be sustained, that Claimant's Formal Reprimand with a one-year review period be removed from his record with seniority, vacation and all other rights unimpaired, and that he be made whole for all time lost as a result.

The Organization urges that the Claim be sustained, and that the discipline be expunged.

DISCUSSION AND ANALYSIS: Rule 11.4.2 specifically describes the procedures required to prepare for manganese and rail steel welding, including the requirement that employees "[r]emove defective metal by arc air or by grinding only." Similarly, Rule 11.4.2 notes that employees should "not remove loose or partially separated pieces using a hammer, pry bar, or other hand tool." The

potential for injury and damage from misuse of a hammer to remove metal is obvious. Despite the Organization's arguments otherwise - that Claimant did not normally use a hammer to strike metal and was unaware that procedures had been changed - the evidence is sufficient to persuade the Board that Claimant used a hammer, a tool specifically prohibited for the work for which he used it. Claimant admitted doing so.

The Board is also not persuaded by the Organization's other contentions. As an initial matter, the Board notes BMWE's contention that the Carrier failed to prove Claimant's fault "beyond a shadow of a doubt." However, that is not the applicable standard applicable in arbitration cases and is, in fact, more stringent than the typical criminal standard of "beyond a reasonable doubt." Substantial evidence considered on the record as a whole is sufficient to satisfy the Carrier's burden. The Carrier met that burden.

In addition, the Organization's confusion as to why Welders are provided with hammers if they are prevented from using them is misplaced. Rule 11.4.2 does not prohibit the use of hammers for any and all purposes, only to "remove loose or separated pieces" when preparing for manganese and rail steel welding. The Board is also not persuaded by the Organization's vague challenge to the Investigation process. It was sufficient and appropriate.

Given the nature and circumstances of Claimant's violations, the Board concludes that the imposition of a Formal Reprimand and one-year review period was appropriate. The Award so reflects.

AWARD: The Claim is denied. The Carrier met its burdens to prove Claimant guilty of the charges and to prove his Formal Reprimand and one-year review period was within the range of reasonableness.

Dated this 18 day of March, 2013.


M. David Vaughn,
Neutral Member


Carrier Member
Ms. Samantha Rogers


Employee Member
Mr. David Tanner