

NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD 6394

Brotherhood of Maintenance of Way Employees)	
Division – IBT Rail Conference)	
)	Case No. 84
And)	
)	Award No. 84
Norfolk Southern Railway Company)	
(Former Norfolk & Western Railway Company))	
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Richard K. Hanft, Chairman and Neutral Member
Jed Dodd, Employee Member
D. L. Kerby, Carrier Member

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The Carrier’s discipline [twenty (20) day suspension] of Messrs. S. Becher, Jr. and M. Puskar in connection with their alleged improper performance of duty and violation of Norfolk Southern Standard Procedures in that on January 14, 2015, while performing thermite weld between CP Toms and CP Blair on the Pittsburgh Division, they failed to ensure that the slag pan and slag material were properly handled and disposed of in accordance with Standard Procedure No. 425, resulting in superheated slag coming into contact with wet ground and exploding, were arbitrary, capricious and unwarranted (Carrier’s Files MW-PITT-15-14-SG-064 NWR and MW-PITT-15-15-SG-065).
2. As a consequence of the violations referred to in Part 1 above, Claimants S. Becher, Jr. and M. Puskar shall receive the maximal remedy allowed under Rule 30(d) of the Agreement.”

FINDINGS:

Public Law Board 6394, upon the whole record and all of the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute herein; and, that the parties to the dispute were given due notice of the hearing thereon and did participate therein.

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

After thoroughly reviewing and considering the record and the parties' presentations, the Board finds that the claim should be disposed of as follows:

Claimants in this matter, S. Becher, Jr. and M. Puskar were assigned and working together as welder (Mr. Becher) and welder helper (Mr. Puskar) on Thermite Welding Gang #69 on January 23, 2015. While performing a thermite weld between CP Toms and CP Blair on the Pittsburgh Division, they are accused of failing to ensure that the slag pan and slag material were properly handled and disposed of in accordance with Standard Procedure No. 425, resulting in superheated slag coming into contact with wet ground and exploding. Claimant Becher sustained burns requiring medical attention as a result of the explosion.

On March 3, 2015, the Carrier convened separate formal investigations and both Claimants were found guilty of improper performance of duty and violation of Norfolk Southern Standard Procedures. Each Claimant was assessed a twenty (20) day suspension from service.

The Carrier argues that the evidentiary record proves that Claimants failed to ensure that slag pans and molten slag material were properly handled and disposed of in accordance with Standard Procedure 425 and that they were disciplined for their collective failure to properly follow a fundamental Carrier rule.

The Organization disputes the Carrier's contention and avers that the evidentiary record simply does not establish that the Claimants violated the charged rules but rather, followed all Standard Procedures by waiting a full three (3) minutes before disturbing the crucible and placing the slag pans on the ground in an area they had cleared of snow.

The Organization maintains that while the Carrier contends that the mere fact that there was an explosion proves that Claimants violated Standard Procedures, the only thing that the explosion proves is that the molten slag encountered moisture and that the Carrier presented no evidence that Claimants did not place the pans on the ground or wait three (3) minutes before disturbing the crucible and at best are guilty of erring in judgement and not with violating Standard Procedures.

The Organization further insists that it is not the Claimants' burden to explain why an explosion occurred, but rather, the Carrier must prove them guilty of violating some standard or rule because an error in judgement on matters not covered by rule are no grounds for discipline.

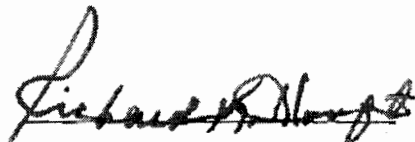
The Board, after thorough review of the record finds that the Carrier did not prove that either of the Claimants violated any Rule or Standard Procedure. It appears to us that slag that was still partially molten was dumped in an area cleared of snow but

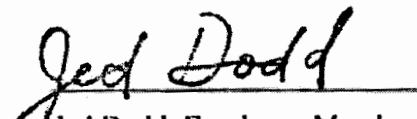
ran down the slope and made contact with moisture. Nevertheless, Claimants share equal responsibility for failing to ensure that their slag disposal area was free and clear of moisture. Moisture, the record evidence showed, is the only variable that will cause an explosion and had to be present for the explosion to occur. Any discipline the Carrier could have assessed would probably be less of a deterrent to future questionable judgement than the injury Mr. Becher sustained.


The Carrier is directed to reduce the discipline assessed on both Claimants to a Reprimand for failing to ensure that their slag disposal area was free from the potential for moisture to come in contact with molten slag. Claimants shall be compensated in all respects for time suspended from service.

AWARD

Claim sustained in accordance with the findings. Carrier is directed to make this Award effective within thirty days following the date that two members of this Board affix their signatures thereto.


Richard K. Hanft, Chairman


Jed Dodd, Employee Member


D. L. Kerby, Carrier Member

Dated at Chicago, Illinois, January 14, 2018