

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 2093,
Docket Number MW-21105

William M. Edgett, Referee

(Brotherhood of Maintenance of Way **Employees**
PARTIES TO DISPUTE: (
(The Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood
that:

(1) The dismissal of **Trackman** Salvador Quijas on April 12, 1973 "as arbitrary, unjust, an excessive penalty, an abuse of discretion and on the basis of charges not sustained by the record (System File **11-680-20-2**).

(2) The decision dated May 1, 1973 by Superintendent J. W. **Tiehen** does not conform with the requirements of Article VI, Section 1 of the Agreement.

(3) As a consequence of (1) and (2) above, the Carrier shall "reinstatement" Salvador Quijas to his former position of **trackman**, with seniority, vacation and all other rights unimpaired and compensate him for all "age loss suffered.

OPINION OF BOARD: Basic fairness and justice requires Carrier to advise an employee **who waives** investigation and accepts discipline, **when** the waiver and acceptance will give him a total number of demerits over the maximum permitted by the Brown system, that by so doing he is thereby assenting to dismissal. **The** notice must be clear and unequivocal.

Claimant was not given notice and he accepted demerits which placed his total over sixty. His dismissal followed automatically and "as unjust, given all of the circumstances. However, his claim for back "ages is denied since the record shows that he had **committed a** rules violation **which, when** viewed in the light of his **record, supports** suspension for the period he has been held off the job.

FINDINGS: The Third Division of the **Adjustment** Board, upon the "hole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the **Employees** involved in this dispute are respectively Carrier and **Employees within** the meaning of the Railway Labor Act, as approved June 21, 1934;

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hat this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That Claimant should be suspended but not dismissed.

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Claim sustained in part. Carrier is directed to restore Claimant to service with full seniority and rights, but without pay for time lost. His **demerit** total is not to exceed **58** at the time he is reinstated.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *A.W. Paulose*
Executive Secretary

Dated at **Chicago**, Illinois, this 30th day of January 1976.