

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21449
Docket Number MW-21583

William G. Caples, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employees**
(Missouri-Kansas-Texas Railroad Company

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

(1) The **dismissal** of Welder Helper G. M. **Marcum** was arbitrary, on the basis of unproven charges and in violation of the Agreement (System File 600-12/2579-23).

(2) Welder Helper G. M. **Marcum** be reinstated with seniority, vacation and all other rights unimpaired and he be compensated for **all** time lost excluding April 1, 1975 to **April 18**, 1975.

OPINION OF BOARD: Claimant, a welder helper, was removed from service of the Carrier April 2, 1975 pending investigation of an alleged cause of insubordination. Investigation was held on April 18, 1975 and claimant was advised by letter on April 23, 1975 of his being found guilty of rule violation and was dismissed from service.

The charge of insubordination arose from claimant's failure to obey alleged instructions of the Roadmaster that women were not allowed to enter company-owned bunk trailers.

It is an undisputed fact that on the evening of April 2, 1975 a female companion was observed in one of the company's trailers occupied by the claimant.

The issue here is whether the instructions issued by the **road-**master to the effect that female companions would not be permitted to enter the Carrier's **camp** trailers were disregarded by the claimant on the evening of April 2, 1975. There is no evidence in the record of posted instructions to the effect female companions were not permitted in trailers and it is assumed that the **alleged** instructions **were** verbal. The question then becomes whether in fact **such** instructions were issued to the claimant in such a manner as to make him **fully** aware of the prohibition against having female companions in the Carrier's camp-trailers. If such instructions were clear and understood and disobeyed, undoubtedly that would be an act of insubordination for which penalty could be given and in the event flagrantly disobeyed for which dismissal could be sustained. However, in this case there is **some** doubt as to how carefully the instructions were given, whether there could have been some doubt as to whether they were fully understood. It would seem **from** the record that dismissal in this instance would be as **the claimant alleges** arbitrary.

The Board has no desire to interfere **with** the well-established rule that the judgment of the Carrier in assessing discipline cannot be interfered with unless the discipline is arbitrary or unreasonable in

amount. It is the opinion of this Board that the factual circumstances in this case were not sufficient to sustain permanent dismissal. Even though insubordination is a serious offense, as **aforenoted**, the degree here shown was not sufficient to justify a permanent discharge. For this reason we direct the carrier to reinstate the claimant with **all** rights unimpaired but without pay for the time lost while out of service.

FINDINGS: The Third Division of the Adjustment Board, upon the whole 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;

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

That the discipline was excessive.

A W A R D

Claim sustained to the extent indicated.in the opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulose
Executive Secretary

Dated at Chicago, Illinois, this 18th day of **March 1977.**