

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21502
Docket Number CL-21713

Joseph A. Sickles, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight **Handlers**, Express and Station **Employees**

PARTIES TO DISPUTE: (

(The Denver and Rio **Grande** Western Railroad Company

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood (GL-8221) that:

1. Carrier acted in an unjust and arbitrary manner when it dismissed Mr. **J. W. Harker** from the services of the Denver and Rio Grande Western Railroad Company on March 31, 1975.

2. Carrier shall now be required to compensate Mr. J. W. **Harker**, eight (8) hours' pay per day for each and every day that he is held out of service and he shall now be restored to the **service** with all rights and privileges unimpaired beginning March 31, 1975, and continue until corrected.

OPINION OF BOARD: On March 13, 1975, Claimant was notified of an investigation concerning alleged failure to physically check certain tracks.

Subsequent to investigation, Claimant was assessed twenty (20) "demerits." Because **that** assessment resulted in an accumulation of over ninety (90) "demerits", he was dismissed from service.

At the investigation, Claimant conceded that his instructions included checks of tracks, and he admitted that he did not physically check tracks 16 and 17 on the day in question because of the press of other duties.

Unquestionably, the Claimant's actions were improper and disciplinary action was warranted. Further, the prior **assessment** of demerits suggests that this **employee's** record has not been exemplar.

While the demerit system may have certain beneficial results, it can - on occasion - result in harsh treatment. We think that such a conclusion is pertinent here, and we are inclined to find that imposition of permanent dismissal is arbitrary under this record, even **when** we consider prior conduct.

At the **same** time, we would be remiss if we did not point out that this Claimant is treading precariously close to terminating his employment relationship. Whether phrased in terms of "one last chance" or similar cautionary language, further deviations from reasonably expected **employee** conduct may very well result in harsher consequences.

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 imposed was excessive..

A W A R D

The claim is sustained to the extent ~~that the dismissal is set~~ aside. Claimant shall be restored to service with retention of seniority and other rights, but without reimbursement for compensation lost **during** the period of the suspension.

NATIONAL RAILROAD ADJUSTMENT BOARD

By Order of Third Division

ATTEST:

A. W. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 15th day of April 1977.

