

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 22040
Docket Number 5622080

David P. **Twomey**, Referee

PARTIES TO DISPUTE: ((Brotherhood of Railroad **Signalmen**
(Missouri Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood
of Railroad Signalmen on the Missouri Pacific
Railroad Company:

On behalf of Assistant Signalman D. **J.** Thornton for reinstatement to service and pay for all time lost, including any **overtime** earned by others on Signal Gang 81011, beginning July 9, 1976 and continuing until he is reinstated on his former position. **[Carrier's File: K 225-7057]**

OPINION OF BOARD: On July 9, 1976, the Claimant, Assistant Signalman D. **J.** Thornton, assigned to Signal Gang 1011, with **headquarters** at Hope, Arkansas, was instructed to perform particular duties by his For-. He told the Foreman, ". . . that he wasn't going to help John **Blevins** . . . that there was water in the ditch along the right of way and that he felt it was unsafe and a hazard to himself to walk through **the water.**" As a result he was **removed** from service and charged as follows:

"Report to **MoPac** Depot, South Main & West Division Streets, Hope, Arkansas, 10:00 A.M. Friday, July 16, 1976, for formal investigation to develop facts and place your responsibility, if any, in connection with your reported failure to comply with instructions from Signal Foreman R. F. Cunningham at about **9:20** A.M. July 9, 1976 at Mile Post 487, Little Rock Subdivision.

If you desire representative and/or witnesses you must arrange for same in accordance with applicable agreement."

The investigation was conducted on July 16, 1976. By letter dated July 22, 1976, the Claimant was notified that he was dismissed from the service of the Carrier as follows:

"You are hereby advised that your record has this date been assessed with 'DISMISSAL' Account your failure to comply with instructions from Signal Foreman **R.**F. Cunningham at about **9:20** A.M., July 9, 1976 at Mile Post

"487, Little Rock Subdivision and violation of Conditions of Employment, **Item 5**, contained in your application for employment dated March 22, 1976.
your record now stands 'DISMISSED'"

We **find** that there is substantial evidence in the record before this Board to support the finding of the Carrier in the instant case. However, we find that this discipline of dismissal is excessive; Therefore the Claimant shall be reinstated with all rights unimpaired, but without back pay or benefits. Certainly in the future the Claimant is expected to follow all reasonable orders pertinent to his assignment as an assistant **signalman**.

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;

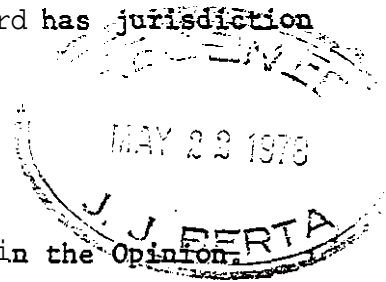
That the Carrier and the **Employees** involved in this dispute are respectively Carrier and **Employees** within the meaning of the Railway Labor Act, as approved June 21, 1934;

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

That the Agreement was violated.

A W A R D

Claim sustained to the extent set forth in the **Opinion**.



NATIONAL RAILROAD **ADJUSTMENT BOARD**
By **Order** of Third Division

ATTEST:

A. W. Phillips
Executive Secretary

Dated at Chicago, Illinois, this 28th **day** of **April** 1978.