

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 22326  
Docket Number **MW-22293**

Abraham Weiss, Referee

(Brotherhood of Maintenance of Way **Employes**  
PARTIES TO DISPUTE: (  
(Louisville and Nashville Railroad Company

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

(1) The dismissal of Rail Lubricator Attendant C. L. Price for alleged 'uncivil and insubordinate' conduct on April 14, 1976 was without just and sufficient cause, unwarranted, on the basis of unproven charges-and in violation of the Agreement **/System** File 1-5 (25)/D-106527 E-306-21.

(2) Rail Lubricator Attendant **C.** L. Price be reinstated with seniority and all other rights unimpaired and he be compensated for all wage loss suffered."

OPINION OF BOARD: Claimant was dismissed for alleged "uncivil and insubordinate" conduct. The events giving rise to the charge can be summarized as follows:

About 10 minutes before Claimant's starting time, Claimant picked up the phone while Roadmaster Nutt was talking on the phone with foreman Underwood. Carrier maintains that Claimant interfered with the Roadmaster's instructions to the foreman and told the Roadmaster to "shut up." Claimant insists that he was told to shut his mouth and mind his own business,

Petitioner holds that at the time of the incident, Claimant was off duty acting in his capacity as local chairman of the **representa-**tive Organization, and hence could not have been insubordinate to Roadmaster Nutt.

At the hearing, Claimant stated "**I** don't recall telling Mr. Nutt to shut up, but I **do not** deny it."

Roadmaster **Nutt**, on the other hand, testified that Claimant injected himself in the ongoing telephone conversation he was holding with foreman Underwood and that Claimant proceeded to countermand his instructions to the foreman. When Nutt instructed Underwood to

do as he was told, Claimant then told Nutt to shut up. **Foreman** Underwood and several other witnesses who were also on the line at the time supported Nutt's statement that Claimant told him to shut **up**. A second foreman, responding to questioning by Claimant's representative, testified **that** he did not hear Mr. Nutt tell Claimant to shut up first.

Our reading of the record leads us to conclude that Claimant did inject himself, without warrant, into the telephone conversation between the **Roadmaster** and the Foreman while the Roadmaster was laying out the day's instructions and **that**, based on the corroborating statements of four people, did tell the Roadmaster to "shut **up**." Such a remark, under the circumstances, was uncalled for and not within his province.

Claimant was guilty, but the offense was not of such a severe or serious nature as to warrant dismissal from service.

Claimant has been out of service for about two and one half . years. It is our judgment **that this** time out of service constitutes sufficient penalty for the offense.

We believe that the penalty of permanent dismissal was excessive. We therefore direct that Claimant be returned to service but without compensation for time lost.

**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 **Employes** involved **in** this dispute are respectively Carrier and Employes 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.

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Claim sustained in accordance with the **Opinion.**

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: *A. W. Paulos*  
Executive Secretary

Dated at Chicago, Illinois, this **28th** day of February **1979.**