

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22826
Docket Number M1-22872

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employes**
(The Denver and Rio **Grande** Western Railroad Company

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

(1) The dismissal of Section-Laborer Peter N. Granger **was** improper and without just and sufficient **cause** /System File D-4-78/MW-6-78/.

(2) The claimant's personal record be cleared of the charge placed **against** him and he be returned to service with all wage **loss** suffered, all **in** accordance with Rule **28(d)**."

OPINION OF BOARD: Claimant was employed by Carrier as section laborer, **under** the **supervision** of Foreman **M. Barone**. On January 13, 1978, claimant **was** notified to attend **formal investigation** on January 17, 1978, **to:**

".... develop facts and place **responsibility**, if any, in connection with Section Laborer P. N. **Granger's** alleged **use of boisterous**, profane or Vulgar language directed to Section Foreman, about **8:30 A.M.**, January 12, 1978, at Colorado Springs."

The investigation was held **as** scheduled. A copy of the transcript of the investigation has been **made** a part of the record. On January 23, 1978, **claimant was** notified of **his** dismissal from the **service**.

We again point out that in discipline cases, the **parties** to the dispute **and** the Board itself are restricted to the testimony adduced at the investigation, and neither party **is** free to supplement that record **subsequent** to the **investigation** or hearing.

There **was** substantial evidence adduced at the investigation conducted on January 17, 1978, including the testimony of claimant, that **claimant** did **use boisterous**, profane and vulgar language directed to his **foreman**. **Claimant contends** that because of an alleged **shortage** in **his pay**, and, not being able to obtain satisfactory **answers** from the foreman, he **became** angry, and **in** the heat of anger he used **some obscene** language toward the foreman.

The Board is well aware that tea room language usually does not prevail on a section crew; however, the language used by the **claimant toward** his foreman simply cannot be condoned. If claimant had a grievance concerning **his** pay, he **should** have handled the **matter** through the grievance procedure rather than personal **abuse** of the foreman.

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** not violated.

A W A R D

Claim denied.

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

ATTEST:

A.W. Pauls
Executive Secretary

Dated at Chicago, **Illinois**, **this** 30th day of April 1980.

