

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22932  
Docket Number MI-23055

Paul C. Carter, Referee

**PARTIES TO DISPUTE:** (Brotherhood of Maintenance of Way **Employees**  
(St. Louis Southwestern Railway Company

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

(1) The dismissal of Welder Helper Gary D. Brickley was without **just** and sufficient cause (System File **MW-78-11-CB**).

(2) Welder Helper Gary D. Brickley shall be reinstated to his former position with pay for all time lost and with vacation, seniority and all other rights unimpaired. The charge shall also be removed from his personal record."

**OPINION OF BOARD:** Claimant, a welder helper, had about four years of service with the Carrier. On April 25, 1978, he was dismissed from the service. The letter of dismissal, handed to him on that date, gave no reason for his dismissal. Claimant requested a hearing under the provisions of the Agreement, and in setting up the hearing, the Division Engineer referred to:

" . . . .your dismissal from **Welding** Gang No. 10 on April 25, 1978, for your violating of General **Regulation M801** of the **Rules** and Regulations for the Maintenance of Way and Structures, when you were insubordinate to and refused to comply with instructions from your Welder on April 25, 1978."

In the hearing it developed that on April 25, 1978, the welder with whom claimant was working instructed the claimant to **mix** a batch of "**mud**", i.e., a sand, clay and water mixture used in packing **Boutel welds**. The claimant complied and mixed what he considered to be sufficient "**mud**". The welder instructed the **helper** to mix more "**mud**", whereupon the claimant informed the welder that he (the claimant) had already mixed enough "**mud**" for the remainder of the day.

Based upon the entire record, the Board finds **that claimant was** insubordinate to the welder. **However**, it **is** our opinion that, under the prevailing circumstances, permanent dismissal was excessive. We will award

that **claimant** be restored to the service with seniority and other rights unimpaired, but without **any** compensation for **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 imposed was excessive.

A W A R D

Claim sustained in accordance with **Opinion and Findings**.

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

ATTEST:

*A.W. Parker*  
Executive Secretary

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

