

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22975
Docket Number M-23127

A. Robert Lowry, Referee

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

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

(1) The discipline of **dismissal** assessed Section Foreman J. A. Weyland was without just or sufficient cause.

(2) **Claimant J. A. Weyland be reinstated** back to service with all benefits and **rights** unimpaired and he be compensated for **all wage** loss suffered because of **the** violation referred to above, **this** in accordance with **Rule 28** of the Agreement (System File **D-29-78/MW-17-78**)."

OPINION OF BOARD: Section Foreman J. A. Weyland, the claimant, was assigned on June 12, 1978 to operate a hi-rail weed sprayer truck on the Westbound track on a double track railroad between the west switch at Helper, Utah, and Soldier Summit. At about 10:35 A.M. the train dispatcher issued the claimant a block authorizing him to occupy and operate the weed sprayer truck on the Westbound track between the west switch, Helper (Mile Post 626.4) and Lynn (Mile Post 632.0), until call. Subsequently the train dispatcher was informed by Assistant Signal Supervisor Trathen who was at Lynn that the weed sprayer truck was west of Lynn. The train dispatcher immediately alerted Trainmaster Higham and Roadmaster Baughman and Trathen to look for and find the weed sprayer truck since it was operating outside its block authority. Shortly thereafter claimant contacted the train dispatcher on his own from the wayside telephone at Mile Post 641, nine miles west of Lynn, the west limit of his block authority. Claimant realized he was beyond his authorized limits which was the reason he called the dispatcher. The train dispatcher then issued block limits authorizing the claimant to operate between West Kyune and Colton and later between Colton and Soldier Summit, where he was removed from service by Trainmaster Higham.

Formal investigation was held on June 16, 1978 under the rules of the agreement. A copy of the transcript of the investigation has been made a part of the record. The Board has carefully reviewed the entire record, including the transcript of the investigation. We find that none of claimant's substantive procedural rights was violated. Claimant was dismissed from service on June 22, 1978.

The Board finds after carefully reviewing the **entire** record that the charges against **the** claimant were proven. The claimant testified **that** he was at Mile Post 641 **when** he called the **train** dispatcher which Mile Post was **nine miles beyond** his authorized **block limit**. He also testified that he did not have **in** his possession a **copy of the** current Time Table as required by the Carrier's Operating Rules.

The principle **bee** **been well established that this Board should** not substitute its judgment for that of **the** Carrier **where** it has produced **substantial evidence that** the offense charged was committed, however, the Board feels **the** punishment, **in view of claimant's** tea years of **unblemished** service, was excessive. We do not think **that his** actions **justified** the Carrier **in depriving** him of **means** of livelihood. We also believe because of **this** serious violation of the Carrier's **Operating** Rules **that** he should not be restored to **service** as a foreman.

It is the Board's **conclusion, and we so award, that** the claimant be restored to service **with** his **former** seniority as **sectionman**, without any compensation for time lost while out of **service, and** without prejudice to his later being considered for **promotion** to foreman if his services warrant. In the event he **is** subsequently **promoted** to foreman within one-year from the date of this award his seniority in **that** class should be restored.

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.

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Claim sustained in accordance with the Opinion,

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *A.W. Parker*
Executive Secretary

Dated at **Chicago, Illinois**, this 12th day of September 1980.