

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Award Number 23257  
Docket Number MW-23446**

**Paul C. Carter, Referee**

**PARTIES TO DISPUTE:** { **Brotherhood of Maintenance of Way Employees**  
                                  { **The Western Pacific Railroad Company**

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

(1) The dismissal of Track Laborer Antonio G. pens for alleged insubordination was without just and sufficient cause, excessive, unduly harsh and an abuse Of Carrier's discretion (System Case No. 11717-1979-BMWE).

(2) Track Laborer Antonio G. Pena shall be reinstated with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered."

**OPINION OF BOARD:** The record shows that claimant had been in Carrier's service about four months. On January 11, 1979, claimant was working in Carrier's switch yard in San Jose, California, and was engaged, with the other members of the gang, in realigning the yard tracks. At approximately 2:00 P.M., claimant was suspended from service, and on January 15, 1979, was notified of formal investigation to be held on January 15, 1979:

"...to determine facts and place your responsibility for your alleged insubordination toward supervisory personnel while working as a laborer on Extra Gang 320 on January 11, 1979."

The investigation was postponed at the request of the Organization and conducted on February 2, 1979. A copy of the transcript of the investigation has been made a part of the record. A review of the transcript shows that none of claimant's substantive procedural rights was violated. Following the investigation, claimant was dismissed from Carrier's service by letter dated February 13, 1979.

A review of the transcript of the investigation shows that claimant refused an order of his foreman, and that he used profane and vulgar language to his foreman. Considering claimant's actions, and his short service with the Carrier, his dismissal was justified and will not be disturbed.

**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 Employee involved in this dispute are

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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 Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

A.W. Paulos  
Executive Secretary

Dated at Chicago, Illinois, this 15th day of April 1981.

