

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23351
Docket Number Mu-23436

Paul C. Carter, 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 dismissal of Section Laborer A. E. Peterson ~~was~~ unwarranted and without ~~just~~ and sufficient cause (System File ~~D-22-79/MW-14-79~~).

(2) Section Laborer A. E. Peterson be reinstated with seniority, vacation ~~and~~ all ~~other~~ rights unimpaired ~~and~~ he shall be compensated for all wage loss suffered."

OPINION OF BOARD: Claimant was employed as a section laborer, assigned to the section gang headquartered at Roper, Utah, under the ~~super-~~ vision of Relief Foreman J. Lozano, and had been in Carrier's service about three years.

On March 15, 1979, he was notified to attend an investigation:

"..at 2:00 EM, Monday, March 19, 1979, to develop facts and place responsibility, if any, in connection with your alleged failure to comply with instructions of assistant foreman and allegedly being insubordinateat approximately8:30 AM, Wednesday, March 14,1979, at Roper.

"Your presence as a principal with a representative of your choice, if desired, is required.

"If you have any witnesses you wish to appear in your behalf, please notify the Superintendent promptly."

The investigation was held as scheduled, following which claimant was notified on March 26, 1979, that he was dismissed ~~from Carrier's~~ service. A copy of the transcript of the investigation has been made a part of the record.

We have carefully reviewed the transcript of the investigation and find that none of claimant's substantive procedural rights was violated. There was substantial evidence in the investigation, including claimant's own statement, to support the charges against the ~~claimant~~. Aspart of the charges ~~against the~~ claimant, he was accused of telling the Relief Foreman "to go to Hell."

In the investigation claimant stated:

"Yes I did that and then I thought that was a little bad...,

* * *

"No, I shouldn't do what I did, but I did. I am not **lying** about it. I did do it and I am sorry about it, but I did do it."

The record also shows that the claimant did comply with the instructions of the For-, but there was some delay in his doing so.

Based upon the entire record, the Board concludes that **discipline** was warranted; however, permanent dismissal was excessive. We will award that claimant be restored to service with seniority and other rights unimpaired, but without compensation for **time** out of the service. **The** claimant should clearly **understand**, however, that the purpose of this Award is to give him one last **chance** to become a dependable and responsible employe of the **Carrier**, and that further major infractions on his part will result in the permanent termination of his services.

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**.

A W A R D

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

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulsen

Executive Secretary

Dated at **Chicago**, Illinois, this 14th day of August 1931.