

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23559  
Docket Number MW-23807

Rodney E. Dennis, Referee

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

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

(1) The dismissal of Section Foreman George M. Vaughan, Jr., WAS without just and sufficient cause and wholly disproportionate to the charge leveled against him (System File D-31-79/MW-23-79).

(2) Section **Foreman** George M. Vaughan, Jr. shall be reinstated with seniority and **all** other rights **unimpaired** and be compensated for **all** wage loss suffered, including overtime, all in accordance with Rule 28(d)."

OPINION OF BOARD: **Claimant**, Section Foreman George M. Vaughan, Jr., WAS notified on May 21, 1979, that he should appear at A hearing on May 24, 1979, to determine if, by his actions while the operator of a **motor car** on May 18, 1979, he WAS careless concerning his safety, AS well as the safety of other **employees**, specifically, **Laborer** R. Brewer.

The hearing was held AS scheduled. **Claimant** WAS found guilty of being careless of his • rul others safety and was dismissed **from** Carrier's service. The transcript of that hearing WAS nude A part of the record of this case. A review of that **transcript** reveals that **Claimant** was afforded A fair hearing. The hearing **officer's insistence** that only questions be asked that related to the incident is not grounded in **any** • rbitral law, but his behavior did not in our judgment prejudice **Claimant's** case.

A review of the record also reveals that **Claimant** WAS in fact careless and did operate the motor car in violation of Carrier's safety rules. By allowing **Laborer** Brewer to be a **human** coupling between the **motor** car and the track car, he did place his life in danger. To allow Brewer to put himself in a **situation** in which he could fall in front of a **moving** motor car is by anyone's standard unacceptable behavior.

Carrier was correct in administering severe discipline to **Claimant**. As a Foreman, he should set **an example** for the safe operation of the equipment. Carrier offered Claimant a chance to return to work AS A Track Laborer. **Claimant** should have accepted Carrier's offer and **made** the best of it. He chose not to do so at his own peril. Carrier made this offer of reinstatement to **Claimant** with the understanding that he not return to work AS .a Foreman because of this incident, as well as because of his poor safety record in the past. This was a sound decision. The Board however is of the opinion that claimant should not be separated from Carrier's employ permanently. **We** are therefore reinstating **claimant** to a Track Laborer's position with all seniority rights unimpaired, but

with no back pay. claimant should not be barred from bidding future supervisory jobs when Carrier is satisfied that he meets the requirements.

**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 was excessive.

A W A R D

Claimant shall be reinstated as . laborer with seniority, but with no back pay.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Or&r of Third Division

ATTEST: Acting Executive Secretary  
National Railroad Adjustment Board

By Rosemarie Brasch  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 10th day of March 1982.

