

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23956  
Docket Number MW-23802

Josef P. Sirefman, Referee

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

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

(1) The dismissal of Track Walker L. L. Valdez was capricious and without just and sufficient cause. (System File **D-35-79/MW-29-79**)

(2) Track Walker L. **L.** Valdez shall be reinstated with seniority, vacation and all other rights unimpaired and be compensated for all wage loss suffered.'

OPINION OF BOARD: Claimant L. L. Valdez, a Track Walker, was served with a notice of investigation "to develop facts and place responsibility, if any, in connection with (Claimant's) absenting himself from duty **as** section laborer without permission at about 8:30AM, July 3, 1979." The investigation was held on July 6, 1979 and on July 16, 1979 Claimant was dismissed from service by the Superintendent.

An examination of the record by the **Board** establishes that Claimant, shortly after his shift began on July 3, 1979, left the Carrier's property and went home for a substantial period of **time** without permission. He returned to work that day only after Carrier's personnel went **to** his house to investigate and found Claimant horse.

There was substantial evidence in the record to sustain Carrier's determination to discipline Claimant. **Claimant's** record shows that he absented himself from duty without proper authorization on two occasions in 1976, and that in April of 1978 he was dismissed **for** the same type of offense only to be reinstated on a leniency basis **some** four months later. The July 3, 1979 incident took place less than a full year after. Then and now leniency is solely within the authority **of** the Carrier. Under these circumstances termination was reasonable.

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 **Agreement was** not violated.

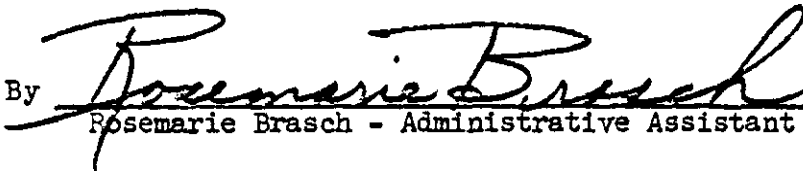
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: Acting Executive Secretary  
National Railroad Adjustment Board

By

  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 30th day of July 1982.