

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23972
Docket Number MW-23843

Josef P. Sirefman, Referee

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way Employees
(Chesapeake and Ohio Railway Company

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

(1) The dismissal of **Machine Operator** James Ramey, Jr. was without just and sufficient cause, excessive and wholly disproportionate to the offense with which charged (System File **C-D-850/MG-2641**).

(2) Machine Operator James Ramey, Jr. shall be afforded the remedy prescribed in Agreement Rule **21(e)**."

OPINION OF BOARD: Claimant James Ramp, Jr., **a machine** operator, was served with a notice of investigation stating:

"You are charged with your **responsibility in** connection with Ballast Regulator, BR 705 being operated on **Number 1 Main Track** between the crossover **switch at** Paint Creek Junction and the **spring switch at** the west end of **Handley Yard without authority** to **occupy that portion of Main Track** at-about 7:10 p.m., Monday, August 6, 1979."

The investigation took place on October 4, 1979, and on October 23, 1979 **Claimant was dismissed from** service.

A review of the record before this Board establishes that Claimant received a **fair and** impartial hearing, and that in spite of ample contrary instructions from supervision and without permission the Claimant **moved** his equipment on a "live track" in a manner which created **a highly** dangerous situation. There was substantial evidence to sustain Carrier's decision to discipline **Claimant**. In view of Claimant's relatively short length of service and the **severity** of his infraction the penalty of 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 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 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*
Rosemarie **Brasch** - Administrative Assistant

Dated at Chicago, Illinois, this 27th day of August 1982.

