

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24229
Docket Number MW-23995

Robert E. Peterson, Referee

(Brotherhood of Maintenance of Way **Employees**
PARTIES TO DISPUTE: (
(The **Kansas** City Southern Railway Company

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

(1) The dismissal of laborer Randy **Moore** for allegedly 'being insubordinate to Assistant **Roadmaster** L. R. Stout' on April 9, 1980 was without just and sufficient cause and wholly disproportionate to the offense with which charged (Carrier's File 013.31-232).

(2) Laborer **Randy Moore** shall be reinstated with seniority and **all** other rights unimpaired and he shall be compensated for **all wage** loss suffered including holiday pay."

OPINION OF BOARD: **The** general issue here is whether under the facts of record and **under** principles long applied by this Division in discipline cases, Carrier had just and proper cause for dismissing **Claimant** or whether **some** lesser penalty would be sufficient for the offense **committed**.

While working as a member of a large **System Steel Gang** consisting of 40 to 45 workers, **Claimant**, an extra gang laborer, used profane and vulgar **language toward** a Carrier **supervisor** in violation of Carrier's Rule "N". At the time of this act of **insubordination**, Claimant had but seven months of service and had previously been issued a **warning** concerning his failure to report for duty at the prescribed **time**.

On the basis of the record, it cannot be properly said **that** the **Carrier** **lacked substantial and compelling reason** for deciding **that Claimant's actions** were so serious and unwarranted that they **merited** imposition of the **dismissal** penalty. In this regard, we have held in **a long line of awards** that we will not upset the penalty meted out by Carrier unless it clearly appears that the disciplinary action **was discriminatory**, unjust, unreasonable or arbitrary so as to constitute **an** abuse of sound discretion. In **this** case we find that the discipline imposed **was commensurate** with the offense, especially **in** view of **Claimant's** limited service and the fact his **remarks** were sufficiently loud to be heard by at least one other witness.

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 end the **Employees** involved in this dispute are respectively Carrier end **Employees** within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Boerd 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 14th day** Of **March 1983.**