

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26418
Docket Number MW-27174

Edwin H. Benn, Referee

(Brotherhood of Maintenance of Way Employees

PARTIES TO DISPUTE: (

(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 Patrolman N. R. Gleason for alleged responsibility in connection with his personal injury and destruction of motor car by fire while working at Leyden, Colorado on April 17, 1985 was without just and sufficient cause and unwarranted (System File D-23-85/MW-18-85).

(2) The claimant shall be reinstated with seniority and all other rights unimpaired, his record shall be cleared of the charges leveled against him and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: At the time of his dismissal, Claimant had approximately four years of service with the Carrier and was employed as a Track Patrolman. Claimant was charged and ultimately dismissed for incidents arising out his personal injury and destruction of a motor car.

The record discloses that on April 17, 1985, Claimant was refueling his assigned motor car when an explosion occurred causing Claimant to be injured and further causing destruction of the motor car. Although disagreement exists in the record, we find the existence of substantial evidence to support the Carrier's decision to impose discipline. A Fire Department report of the incident states that gasoline fumes were ignited by a heating element which had been shut off just prior to refueling. In our opinion, the Carrier was therefore justified in concluding that Claimant did not exercise sufficient care and did not wait a proper amount of time to permit the motor and its components to properly cool before refueling. See Second Division Award 10047.

However, under the circumstances of this case, we are of the opinion that dismissal was excessive. There is no indication that Claimant's record prior to this incident was less than satisfactory. Therefore, we shall award that Claimant be returned to service with seniority unimpaired but without compensation for time lost.

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::


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 24th day of August 1987.