

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26475
Docket Number MU-27026

John E. Cloney, 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 B&B Carpenter W. R. Johnson, for alleged unauthorized use and destruction of company vehicle Unit 203 while off duty and under the influence of alcohol, was excessive and an abuse of justice and discretion by the Carrier (System File **D-17-85/MW-19-85**).

2. The claimant shall be reinstated with seniority and all other rights unimpaired, his record shall be cleared and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: Claimant had almost 14 years of service when he was notified that:

"Formal investigation will be held . . . April 14, 1985 . . . to determine facts and place responsibility, if any, in connection with your alleged unauthorized use of company vehicle Unit 203, while off duty and under the influence of alcohol resulting in the destruction of **company** vehicle Unit 203 at McCoy, Colorado, on State Highway 131 at approximately 1:30 A.M., Wednesday, March 27, 1985."

From the Investigation it appeared that Claimant had been instructed on March 26, 1985, to work at **Minturn**, Colorado until 4:00 P.M. and then drive the truck on an overtime basis to Phippsburg, Colorado where the crew was to work the next day. Instead Claimant drove the truck to Wolcott where he parked it on railroad property and went in another employee's car to a bowling alley in **Glenwood** where he "had a few drinks." They later stopped to get "sandwiches and stuff," after which Claimant was driven back to the truck and at "one or a little after" he started for Phippsburg. On the way he fell asleep and the truck went off the road and flipped over. Claimant was injured and the unit destroyed. Claimant was charged with driving under the influence of intoxicants. A blood alcohol test administered 5 1/2 hours after the incident showed a result of **.076**. This was projected to show intoxication at the time of the accident. Claimant admits he "didn't comply" with Rule G.

The Organization argues the use of the Unit was authorized and Carrier failed to prove Claimant was under the influence while operating it. We do not agree. Further the Organization contends the discipline was excessive.

This Board recognizes Claimant had a considerable length of service and we are not unsympathetic in view of this mitigating circumstance. However this Rule G violation was very serious. It resulted in injury to Claimant and destruction of the vehicle. Even more serious consequences could easily be imagined. This is not a case in which this Board will interfere with the penalty imposed.

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

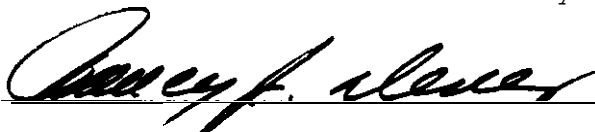
The Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 9th day of September 1987.