

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 28078
Docket No. MW-28436
89-3-88-3-225

The Third Division consisted of the regular members and in addition Referee Charlotte Gold when award was rendered.

(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 Section Foreman S. G. Nyhus for alleged failure to follow roadmaster's instructions by not properly performing his duties while removing shims in the vicinity of Mile Post 56.2 near west end of the Moffat Tunnel on May 1, 1987, was arbitrary, capricious, unjust and in violation of the Agreement (System File D-87-08/MW-16-87).

(2) The Claimant shall be returned to service with seniority and all other rights unimpaired, his record shall be cleared of the charge leveled against him and he shall be compensated for all wage loss suffered in accordance with Agreement Rule 28."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Following an investigation held on May 19, 1987, Claimant, a Section Foreman, was terminated from service for allegedly failing to follow his Roadmaster's instructions while removing shims in the vicinity of the Moffat Tunnel, leaving the track unsafe for train movement. Claimant had been told to remove the shims, surface the track, and put the track back in normal condition. Later in the day, the track was observed to be 2 1/4" out of alignment.

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Upon a complete review of the record, including the transcript of the investigation, this Board finds that substantive evidence supporting Claimant's deficiency in work performance was brought forth at the hearing. Given Claimant's past record and seniority, however, we believe that a penalty less than discharge is warranted. Thus, we direct that he be reinstated as a Laborer and be given one year in which to requalify as a Foreman.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 11th day of September 1989.