

Award No. 12687
Docket No. MW-12070

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Lee R. West, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

**THE DENVER AND RIO GRANDE WESTERN
RAILROAD COMPANY**

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

(1) The Carrier violated the effective Agreement when it dismissed Section Foreman Dick H. Lowe from service on January 13, 1960.

(2) Mr. Dick H. Lowe now be reinstated to his position of section foreman at Burns, Colorado with seniority and vacation rights unimpaired and with reimbursement for all time lost from January 14, 1960 and continuing until he is reinstated.

OPINION OF BOARD: Claimant asks to be reimbursed for all time lost by reason of his suspension from January 14, 1960 for a period of about five (5) months. Such suspension occurred after Claimant had failed to remove slow boards as directed by Division Engineer Combs, a superior.

From a thorough examination of the record it appears that Claimant, Section Foreman Lowe, after being ordered to remove slow boards, consciously and intentionally refused to do so. The record indicates a positive intention upon Claimant's part to substitute his judgment for that of a superior, after such superior had been made aware of all the relevant factors and had reached a decision contrary to Claimant's viewpoint. The decision by the Division Engineer was clear and definite. It was communicated to Claimant in a written message. In view of this, the failure to follow such order constitutes clear and obvious insubordination by Claimant without any justification.

In such case, there is no reason for rescinding or modifying the discipline imposed by Carrier on an insubordinate employe.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 Agreement has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June, 1964.