

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22826
Docket Number MW-22872

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(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 Laborer Peter N. Granger was improper and without just and sufficient cause /System File D-4-78/MW-6-78/.

(2) The claimant's personal record be cleared of the charge placed against him and he be returned to service with all wage loss suffered, all in accordance with Rule 28(d)."

OPINION OF BOARD: Claimant was employed by Carrier as section laborer, under the supervision of Foreman M. Barone. On January 13, 1978, claimant was notified to attend formal investigation on January 17, 1978, to:

".... develop facts and place responsibility, if any, in connection with Section Laborer P. N. Granger's alleged use of boisterous, profane or vulgar language directed to Section Foreman, about 8:30 A.M., January 12, 1978, at Colorado Springs."

The investigation was held as scheduled. A copy of the transcript of the investigation has been made a part of the record. On January 23, 1978, claimant was notified of his dismissal from the service.

We again point out that in discipline cases, the parties to the dispute and the Board itself are restricted to the testimony adduced at the investigation, and neither party is free to supplement that record subsequent to the investigation or hearing.

There was substantial evidence adduced at the investigation conducted on January 17, 1978, including the testimony of claimant, that claimant did use boisterous, profane and vulgar language directed to his foreman. Claimant contends that because of an alleged shortage in his pay, and, not being able to obtain satisfactory answers from the foreman, he became angry, and in the heat of anger he used some obscene language toward the foreman.

The Board is well aware that tea room language usually does not prevail on a section crew; however, the language used by the claimant toward his foreman simply cannot be condoned. If claimant had a grievance concerning his pay, he should have handled the matter through the grievance procedure rather than personal abuse of the foreman.

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 Employee involved in this dispute are respectively Carrier and Employee 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 was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulsen
Executive Secretary

Dated at Chicago, Illinois, this 30th day of April 1980.

