

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23351
Docket Number MW-23436

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 A. E. Peterson was unwarranted and without just and sufficient cause (System File D-22-79/MW-14-79).

(2) Section Laborer A. E. Peterson be reinstated with seniority, vacation and all other rights unimpaired and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: Claimant was employed as a section laborer, assigned to the section gang headquartered at Roper, Utah, under the supervision of Relief Foreman J. Lozano, and had been in Carrier's service about three years.

On March 15, 1979, he was notified to attend an investigation:

"...at 2:00 PM, Monday, March 19, 1979, to develop facts and place responsibility, if any, in connection with your alleged failure to comply with instructions of assistant foreman and allegedly being insubordinate at approximately 8:30 AM, Wednesday, March 14, 1979, at Roper.

"Your presence as a principal with a representative of your choice, if desired, is required.

"If you have any witnesses you wish to appear in your behalf, please notify the Superintendent promptly."

The investigation was held as scheduled, following which claimant was notified on March 26, 1979, that he was dismissed from Carrier's service. A copy of the transcript of the investigation has been made a part of the record.

We have carefully reviewed the transcript of the investigation and find that none of claimant's substantive procedural rights was violated. There was substantial evidence in the investigation, including claimant's own statement, to support the charges against the claimant. As part of the charges against the claimant, he was accused of telling the Relief Foreman "to go to Hell."

In the investigation claimant stated:

"Yes I did that and then I thought that was a little bad....

* * *

"No, I shouldn't do what I did, but I did. I am not lying about it. I did do it and I am sorry about it, but I did do it."

The record also shows that the claimant did comply with the instructions of the Foreman, but there was some delay in his doing so.

Based upon the entire record, the Board concludes that discipline was warranted; however, permanent dismissal was excessive. We will award that claimant be restored to service with seniority and other rights unimpaired, but without compensation for time out of the service. The claimant should clearly understand, however, that the purpose of this Award is to give him one last chance to become a dependable and responsible employe of the Carrier, and that further major infractions on his part will result in the permanent termination of his services.

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:

A. W. Paulsen

Executive Secretary

Dated at Chicago, Illinois, this 14th day of August 1931.