

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23972  
Docket Number MW-23843

Josef P. Sirefman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(Chesapeake and Ohio Railway Company

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

(1) The dismissal of Machine Operator James Ramey, Jr. was without just and sufficient cause, excessive and wholly disproportionate to the offense with which charged (System File C-D-850/MG-2641).

(2) Machine Operator James Ramey, Jr. shall be afforded the remedy prescribed in Agreement Rule 21(e)."

OPINION OF BOARD: Claimant James Ramey, Jr., a machine operator, was served with a notice of investigation stating:

"You are charged with your responsibility in connection with Ballast Regulator, BR 705 being operated on Number 1 Main Track between the crossover switch at Paint Creek Junction and the spring switch at the west end of Handley Yard without authority to occupy that portion of Main Track at about 7:10 p.m., Monday, August 6, 1979."

The investigation took place on October 4, 1979, and on October 23, 1979 Claimant was dismissed from service.

A review of the record before this Board establishes that Claimant received a fair and impartial hearing, and that in spite of ample contrary instructions from supervision and without permission the Claimant moved his equipment on a "live track" in a manner which created a highly dangerous situation. There was substantial evidence to sustain Carrier's decision to discipline Claimant. In view of Claimant's relatively short length of service and the severity of his infraction the penalty of termination was reasonable.

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

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest: Acting Executive Secretary  
National Railroad Adjustment Board

By Rosemarie Brasch  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 27th day of August 1982.

