

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23007
Docket Number MW-23137

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of **Maintenance** of Way **Employes**
(St. Louis **Southwestern** Railway Company

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

(1) The dismissal of Welder Helper V. **R.** Davis, Jr. for alleged violation of Males '**M**' and '**M 243**' was without just **and** sufficient cause and on the basis of unproven charges (System File **MW-79-3-CB**).

(2) Claimant V. **R.** Davis, Jr. shall be returned to service with pay for all **time** lost and with seniority, vacation **and** all other rights unimpaired."

OPINION OF BOARD: Claimant, who had been employed by the Carrier approximately one year and five months, **was working** as a welder helper. On November 22, 1978, he was driving a truck that was involved in a collision **with** a Company bus. **He** was dismissed from service **on that date**. He requested a hearing and on November 27, 1978, the Division Engineer **wrote** him:

"Reference to your undated letter received in this office November 27, 1978, requesting a fair and impartial hearing **account** of **your** dismissal from the employment of the St. Louis Southwestern Railway Company **November 22, 1978**.

"**For** your violations of that **part** of the **Rules and Regulations** for the **government** of **Maintenance** of Way **and** Engineering Department **Employes** of the St. Louis **Southwestern** Railway Company as quoted below, you were dismissed **from** the **service** of the St. Louis Southwestern Railway Company.

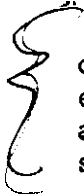
"**Rule M.** 'Carelessness by **employes** will not be condoned and they **must** exercise care to avoid injury to themselves or others' . . .

"**Rule H243.** 'No motor vehicle is to be set in motion until it is **known that the way** is clear. Care **must** be exercised in parking and driving, either on or off the right-of-way, to avoid **damage** to equipment or injury to occupants' . . .

"At **your** request, you are granted a fair and impartial hearing to be held in the Division Engineer's Office, Pine Bluff, Arkansas **at** 10:00 A.M. Thursday, November 30, 1978. You may have representative **and** witness of your choice to assist you at the hearing."

The hearing was conducted as scheduled, and on December 6, 1978, claimant's dismissal was affirmed. A copy of the transcript of the hearing has been made a part of the record.

The Board has carefully reviewed the transcript of the hearing and finds that none of **claimant's** substantive procedural rights was violated. While there were **some** conflicts in the **testimony** given at the **hearing**, it is not the function of this Board to weigh evidence, attempt to resolve conflicts therein, or to pass upon the credibility of witnesses. Such functions are reserved to the hearing officer.

 **Based** upon our careful consideration of 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 pay for time lost while out of the service.

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 imposed was excessive.

A W A R D

Claim sustained **in** accordance with Opinion **and Findings**.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATJ:EST:


Executive Secretary

Dated at Chicago, Illinois, **this 17th** day of **October 1980.**