

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 28996
Docket No. SG-29064
91-3-89-3-501

The Third Division consisted of the regular members and in addition Referee Rodney E. Dennis when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(CSX Transportation, Inc. (former Baltimore & Ohio Railroad Company)

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSXT (Baltimore and Ohio Railroad Company (B&O):

On behalf of Brother R. D. Cusimano, for reinstatement to service account of Carrier violated the current Signalmen's Agreement, as amended, particularly the Discipline Rule." Carrier file 15-(89-1).

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Claimant was employed by Carrier as a Signalman assigned to a Crossing Protection Gang (7XA6) working in the vicinity of Dayton, Ohio. On August 19, 1988, Claimant was charged as follows:

"You are charged with being absent from duty without permission and failing to notify your foreman or a supervisor of the reason for your unexcused absence from Crossing Force 7XA6 on the following days:

Monday	August 8, 1988
Tuesday	August 9, 1988
Wednesday	August 10, 1988
Thursday	August 11, 1988

* * * * *

A Hearing into the charges was held on August 25, 1988. As a result of that Hearing, Claimant was found guilty as charged and dismissed from Carrier's service. Claimant's dismissal was appealed by the Organization. It has been denied by the Carrier at each level of appeal and ultimately placed before this Board for resolution.

The Board has reviewed the record, together with the transcript of the Hearing. As a result of that review, we have concluded that Claimant received a full and fair Hearing and was afforded all substantive and procedural rights guaranteed by Agreement. The Board is also persuaded that Claimant was guilty as charged and that severe discipline was appropriate. Under the circumstances presented in this case, however, the Board is not persuaded that permanent dismissal from Carrier's employ is appropriate.

This Board recognizes that Claimant does not have an admirable work record and that he has had numerous attendance problems in the past. It seems logical that these attendance problems could have resulted from Claimant's drinking problem, as is the case in many similar situations. The Board does not condone such behavior and has, on numerous occasions, upheld the dismissal of employees guilty of similar charges. The Board in this case, however, is impressed with the fact that Claimant sought help for his alcohol problem on his own and enrolled himself in a rehabilitation program. The record seems clear on the fact that the day Claimant was charged as absent without proper authority, he was in the Hospital beginning a rehabilitation program.

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In the interest of justice and in an attempt to give Claimant an opportunity to become a worthwhile employee, this Board will grant him one last chance to prove himself. We conclude that dismissal from service under the conditions present here is arbitrary and unduly harsh. Given that Claimant took the initiative to begin alcoholism rehabilitation on his own and given the fact that there is some chance, based on the record, that he did inform his Foreman that he would be off on the days in question, another chance at employment is justified.

Claimant and the Organization should be fully aware that this is a last chance for him. Claimant must know that he is to report to work every day, on time, and remain on the job for his full shift. Any future incidents or unexcused absences or excessive absence for any reason will be grounds for permanent discharge. Claimant shall be returned to work upon successfully passing a return-to-work physical with seniority unimpaired, but without pay for time lost or benefits. His time out of service shall be carried on his record as a disciplinary suspension.

A W A R D

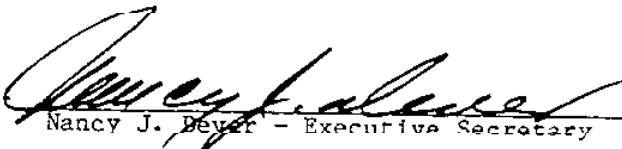
Claimant sustained in accordance with the Findings.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 24th day of September 1991.