

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22512  
Docket Number MW-22357

James F. **Scearce**, Referee

**(Brotherhood of Maintenance of Way Employees**  
PARTIES TO DISPUTE: (  
(The **Baltimore** and Ohio Railroad **Company**

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

(1) The dismissal of Assistant Track For- A. C. **Bellinger**  
was without just and sufficient cause **and** on the basis of charges other  
**than that placed against him (System File BALT-W-204/2-MG-1719).**

(2) The claimant **shall** be reinstated to service with seniority  
unimpaired."

OPINION OF BOARD: Claimant had about four years service as Assistant Track  
Foreman at the time of the incident which has  
culminated before this **Board**. The record indicates he was removed **from**  
service after a hearing which concluded that he was guilty of conduct  
unbecoming an **employee**, such action occurring on July 26, 1976. **On that**  
date the **Claimant** was assisting his crew in loading "rail **anchors**" (or  
"anti-creepers") on the rear of a truck. The **Claimant** initially had  
disdained from doing so, contending his assistance was **not** necessary **and/**  
or that he was not feeling well. He was ordered to do so by his superior  
(the **craw foreman**). As the loading of the anchors was about to conclude,  
the **Claimant** propelled one **of the** anchors to the other side of **the** truck,  
at such a velocity that it broke a **slat** and glanced in the direction of  
the foreman. The Claimant thereafter proceeded to the cab of the truck,  
opened it, got in and **slammed** the door. He left the premises shortly  
thereafter.

The Organization contends certain procedural errors by the  
Carrier and Hearing Officer which, upon review of the record, **are**  
considered to be without merit. **Particular among** them **was failure** Of  
the **Claimant** to receive written notice of the hearing. That the Claimant  
was aware of the hearing was *borne out* by his presence; additionally, a  
certified letter was sent the **Claimant**, but returned marked "**moved**, left  
no address." The Carrier is not obliged to do more than **attempt** "construc-  
tive notice" through the best address available.

While the Carrier's disciplinary action must, in this instance,  
be **predicated** to an extent upon conjecture, i.e. was the **Claimant's**

actions before **and** after "the incident" in Concert with the intent attributed to him in the act itself, we find no fault with its **conclusions**. We surmise that the Claimant's **ill-conceived act** may have been out of pique and possibly at a time **when he might have** not been at the **height** of health, **but** it is **altogether** reasonable to expect a better measure of restraint **and** judgment, of one who is **required** to lead or direct others, **than was demonstrated**.

**Nonetheless**, we conclude that the desired result will be accomplished here by returning the **Claimant** to service, without **back** pay, but with his seniority unimpaired. We **add the condition** that this is a "last **chance**" opportunity for the **Claimant** to demonstrate his worth as **an employee**.

**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**s involved in this dispute are *respectively* **Carrier** and **Employee**s 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 violated.

A W A R D

Claim sustained to the extent **set forth in the Findings**.

NATIONAL RAILROAD ADJUSTMENT WARD  
By Order of **Third Division**

ATTEST:

  
Executive Secretary

**Dated** at Chicago, Illinois, this **17th day** of September **1979**.