

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22513
Docket Number CL-22372

James F. Searce, Referee

PARTIES TO DISPUTE: (**Brotherhood of Railway, Airline and
Steamship Clerks, Freight Handlers,
Express and Station Employees**
(The Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood
(GL-8495) that:

(1) Carrier violated the Agreement between the Parties when it arbitrarily and in abuse of discretion dismissed Extra Clerk, Mr. **Jerry Torain** from service, effective April 23, 1976, and

(2) Carrier **shall, as a** result, be required to reinstate Mr. **Torain** to service with all rights unimpaired, clear his record of the **charges, and compensate** him for all wage losses from April 23, 1976 until he is restored to Carrier's service.

OPINION OF BOARD: Claimant was an Extra-Clerk assigned to the **Baltimore Terminal** Extra Board, with about 23 months service at the time of his dismissal. On **March 24, 1976**, the Claimant was called a total of **eight times** to report for duty. Such calls were made to two telephone numbers the Claimant had given as contact numbers; 6 such calls were unanswered, and 2 were answered, once by the Claimant's father and once by his sister, neither of whom professed knowledge of his whereabouts. Additionally, while the Claimant contended he had been in contact continuously with the office before and after the March 24 date, the Carrier claims no indication of such contact until **March 28, 1976**. The Carrier points to Rule 25 which guarantees payment for forty hours per week unless affected employee fails to respond to a call, as the basis for emphasizing the importance of the Extra Board employees being available for work. The Organization contends, contrariwise, that such language represents the only action a Carrier can take (i.e. a reduction of the guarantee) if an employee fails to respond to a call. Based upon the Claimant's failure to respond on **March 24, 1976**, a hearing was convened, the results of which was his dismissal; his prior record of discipline was cited as a further basis for his removal.

We are not persuaded by the Organization's claims that the only penalty for failure to answer a call is a reduction of the guarantee under Rule 25. The Carrier has an obligation to maintain a viable operation;

to do so, it must be able to expect a responsive and available work force. In and of itself, the **Claimant's** unavailability on March 24, 1976, would not be an offense deserving dismissal. However, this Incident was the last in a series of missed Calls or opportunities spanning a 13-month period, and for which the **Claimant** had received progressive discipline; the last such discipline was a 30-day suspension, ending a month or so prior to this incident. The Carrier concluded correctly that such a pattern of disregard was Intolerable. We find no basis for upsetting the Carrier's decision in this case.

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** involved in this dispute are respectively Carrier and **Employee** 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 is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD

By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

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