

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award **Number** 25628
Docket **Number** NW-25941

John W. Gaines, Referee

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way **Employes**
(Burlington Northern Railroad Company

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

"1. The dismissal of Welder Helper D. **Shipman** for alleged violation of Rule '**G**' "as arbitrary, capricious, unwarranted and on basis of unproven charges (System File C-5-831.

2. The Claimant shall be reinstated with seniority and all other rights unimpaired, his record shall be cleared of the charge leveled against him and he shall be compensated for all "age loss suffered."

OPINION OF BOARD: Allegedly violated "as the prohibition as set out in **Maintenance of Way Rule "G":**

"...**Employees** must not report for duty under the influence of any alcoholic beverage, intoxicant, narcotic, marijuana or other controlled substance, or medication, including those prescribed by a Doctor, that may in any way adversely affect their alertness. coordination, reaction. response or safety."

Carrier's decision to dismiss Claimant followed a formal hearing at which Claimant testified in his **own** behalf and Carrier introduced documentary evidence including a hospital blood test report and had two Roadmasters testify in Carrier's cause. Claimant's service record "as considered on the property.

The decision of dismissal for violation as found, "as set forth in Carrier's letter to Claimant dated April 14, 1983. **Up** to that time Claimant "as being held out of **service**, pending investigation.

We do not go on this record condoning alcoholic usage in any amounts such that there can be a measurable **blood** alcohol level in the worker when he reports for duty. Nor do we discourage the Carrier from erring on the side of safety when Carrier sensed some likelihood that the worker was reporting for work partially intoxicated. Guilt, in instances where it can be found, of being under the influence when subject to duty constitutes a most serious offense in the vital matter of railway safety.

We find just and sufficient cause to warrant Carrier in the present instance to take the precautions it has taken in the interests of extreme vigilance as to safety, notwithstanding the inevitable result of this instance whereby Claimant has been held out of service for the period. There **were** reasonable and justifiable doubts raised in the matter by the fact of the **two**

Roadmasters testifying alike that each had smelled alcohol on Claimant's breath, and by the chemically determined fact of the blood alcohol test yielding a positive reading that he had consumed alcohol. As a consideration which was brought out from the **service** record aforementioned, Claimant was noted to have lost seven months' time in 1980-1981; he had received severe discipline for infractions of other sorts, resulting in dismissal and, later, reinstatement on basis of leniency but without pay for the time lost in 1980-1981.

The testimony of the Roadmasters and the confirming report of the blood alcohol test constituted substantial evidence that Claimant had, to say the least, consumed alcohol prior to reporting for work.

Based upon the record before the Board, we find that discipline was warranted, but that permanent dismissal was excessive. Claimant has accumulated nine years in time of service and, in that time, has qualified for and received promotions as noted in his record.

We will award that Claimant be reinstated with seniority and all other rights unimpaired. However, we will not award any compensation for time Claimant may have lost while **out of service**.

The Organization's position as to time **limits is** not well taken in connection with the above specified date of Carrier's dismissal letter. The **point** appears to have been dropped **in** the final submissions.

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 discipline was excessive.

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AWARD

Claim sustained in accordance with the **Opinion.**

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third **Divison**

Attest:

A handwritten signature in cursive script, appearing to read "Nancy J. Dever", is written over a solid horizontal line.

Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 19th day of September 1985