

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26118  
Docket Number MW-26165

Philip Harris, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(  
(Consolidated Rail Corporation

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

(1) The dismissal of Trackman D. Baines for allegedly 'Being under the influence of an alcoholic beverage at approximately 8:00 A.M. on May 16, 1983, while on duty.... Violation of Rule 3010, Conrail Safety Rules' was without just and sufficient cause and on the basis of unproven charges (System Docket CR-379-D).

(2) The claimant shall be reinstated with seniority and all other rights unimpaired, his record shall be cleared of the charges leveled against him and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: On May 16, 1983, Claimant was removed from service because he had alcohol on his breath and signs of intoxication. The Organization says he had not consumed alcoholic beverages, and the behavior he manifested was due to driving through the night to report back from furlough to exercise his seniority. Furthermore, at the time of removal from service he was not yet back on the payroll, so he could not possibly be dismissed.

The Carrier states that three Management witnesses testified that Claimant had alcohol on his breath, slurred speech, poorly coordinated actions and bloodshot eyes. As to his duty status, the record shows that the Claimant had his signature on the daily sign-in sheet, and that he had been assigned a position.

It is a well established principle that the Board does not try again the cases before it. The Carrier has determined that Claimant was under the influence of alcohol, an offense that has long been held to justify dismissal. We accept the Carrier's determination as to the Claimant's condition. However, we are of the Opinion that, given his spotless record during his years of service, he should be given another chance. His time off to date has served its purpose, and he should be returned to his position with all rights restored, but without backpay.

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.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 19th day of September 1986.

