

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26346
Docket Number MW-26350

Robert W. McAllister, Referee

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

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

1. The dismissal of Repairman A. C. Swan for alleged violation of Rule 'D' was without just and sufficient cause and on the basis of unproven charges (System Docket 594-D).

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

OPINION OF BOARD: The Claimant, a Repairman with eight years of service, was dismissed from service by letter of November 18, 1983, which found him guilty of violating Rule D. The Carrier charged the Claimant with being found **in** a Company vehicle in an intoxicated state on October 28, 1983. The Organization contends the Carrier failed to meet its burden of proof. The Organization argues the testimony does not show or prove a violation of that portion of Rule **D** relied **upon to support the Claimant's** dismissal.

Despite this objection, the Board notes the record establishes the Claimant admitted he parked the Company vehicle on Company property and assertedly walked into Lucas, Ohio. On October 28, the Claimant admitted to consuming five 12 **ounce** bottles of beer at Lucas. When asked if he considered himself intoxicated when found, he answered, "No, but I did consider myself unsafe to drive." The Police report of the **Richland** County Sheriff's office lists the classification of offense as "intoxication." The **report states the** Claimant was passed **out** in the Carrier's vehicle. It notes the Claimant **had a** strong odor of alcohol and was unsteady standing. The **report states the Claimant** said that he had been drinking.

This Board concludes the record clearly **supports** the Carrier's determination the **Claimant** was guilty as charged. When the Police report and testimony of the Carrier witnesses plus the Claimant's own admission are considered, we find no basis to disturb the Carrier's findings **or** assessment of **discipline**. In view of the substantial evidence before us, we will deny the Claim.

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 Employes involved in this dispute are respectively Carrier and Employes 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

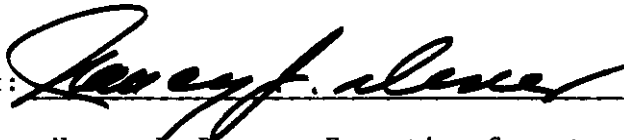
That the Agreement was not violated.

A W A R D

Claim denied.

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

Attest:

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

Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 8th day of June 1987.