

CORRECTED

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26443
Docket Number MM-26640

James R. Johnson, 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 MW **Repairman J. A. Byers** for alleged '1) Operating a company vehicle ... while under the influence of alcoholic beverages . . . 2) unauthorized operation of a company vehicle . . . 3) Violation of . . . Safety Rule . . . 3335 . . . 4) Violation of . . . Safety Rule . . . 3003' was without **just** and sufficient cause, arbitrary and on the basis of unproven charges (System Docket **CR-1219D**).

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

OPINION OF BOARD: The Claimant was a Maintenance of Way Repairman, and was assigned a Company vehicle, which he was permitted to drive between home and work. On October 9, 1984, he **was** observed leaving a tavern by an Agent of the Carrier's Police. The Officer followed the Claimant as he left driving the Carrier's vehicle, and testified that the Claimant was operating the vehicle in a "unsafe manner.

The Officer signaled Claimant to stop, and the Claimant admitted to having consumed six beers (the Claimant admitted during the Hearing to having consumed five beers) with his dinner. The Claimant subsequently took a blood alcohol test, which established that his Blood Alcohol Content was **.09** percent.

A" Investigation was held during which the Carrier presented evidence and testimony which supports the contention that Claimant was driving a Company vehicle while under the influence of alcohol. Claimant did not deny drinking five beers, but contended that he was not on duty at the time and that the amount of alcohol consumed did not render him "intoxicated" within the parameters of the State Law.

Whether Claimant consumed five beers or six beers before driving the Carrier's vehicle is irrelevant. The Rules prohibit the operation of Company vehicles or equipment after consuming any amount of alcohol. Neither is it significant that Claimant was off duty when the offense occurred. Whenever and wherever a " **employee** is entrusted with a Company vehicle, he is responsible for its safe operation, and is subject to Carrier's Rules and discipline if he violates those Rules. The Board finds that Claimant was guilty and that discipline was appropriate.

The Claimant had more than ten years' service with a good record, and the Organization points out that the Carrier has an **Employee** Assistance Program for alcohol abuse cases. Considering Claimant's record and the nature of the offense, it argues that Claimant should be remanded to that Program and treated in the same manner as other **employees**, if he successfully completes the Program. The Board agrees.

It is the opinion of this Board that Carrier is to notify the Claimant at his last known address, that he is invited to enter its **Employee** Assistance Program. Claimant must enter the program within thirty days of notification of this Award by the Carrier and he must successfully complete the program. If Claimant complies then he is to be reinstated with all seniority and other rights unimpaired, but without pay for time lost.

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

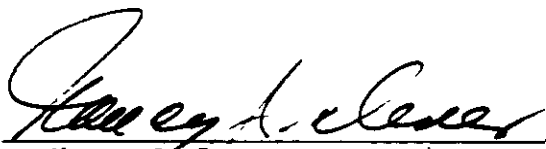
That the discipline was excessive.

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 24th day of August 1987.