

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26589  
Docket Number X-26884

John E. Cloney, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen  
(The Baltimore and Ohio Railroad Company.

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the  
Brotherhood of Railroad Signalmen on the Baltimore and  
Ohio Railroad Company (**B&O**).

On behalf of R. L. Miller for reinstatement to service with all lost  
pay and benefits restored effective October 31, 1984, account of his alleged  
violation of Rule 'G' on October 18, 1984. Carrier File 2-X-754."

OPINION OF BOARD: On October 19, 1984, Claimant, with 14 years of service,  
was notified to attend an Investigation on October 25. He  
was charged with being under the influence of intoxicants while on duty on  
October 18, 1984.

On October 31, 1984, the Manager Engineering wrote Claimant informing  
him as a result of the Investigation he was found to have violated Rule G and  
was dismissed.

The General Chairman by letter of November 19, 1984, requested a  
Hearing to appeal Carrier's decision. During handling on the property Carrier  
wrote the General Chairman that his letter had not been received until Novem-  
ber 26, 1984, and that therefore responses to him on December 3 and 6, 1984,  
were timely. The Organization now states Postal Receipts show the letter "as  
received on November 23, 1984, but it made no such response, nor did it offer  
the receipts, on the property. The Carrier in turn claimed the Manager of  
Engineering had never been notified of rejection of his decision in violation  
of Rule requirements. This position was not developed further on the prop-  
erty. Thus this Board is not in a position to consider either procedural  
Claim.

There was sufficient evidence introduced at the Investigation to  
support Carrier's conclusion that Claimant had violated Rule G. It is not for  
this Board to interfere with that finding. However we do note Claimant had 14  
years of service and there is no evidence of any prior problems or Rule in-  
fractions. Thus, despite our agreement that the Rule was violated we believe  
the discipline, in the circumstances, was excessive. We will therefore re-  
quire Claimant be reinstated, but without back pay and on a last chance basis.

A condition of Claimant's reinstatement will be his participation in  
any employee assistance program Carrier maintains provided the program coun-  
selor determines Claimant need such assistance.

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

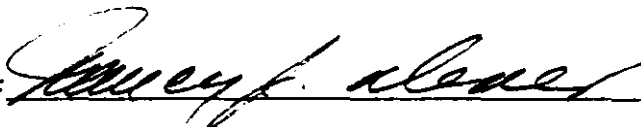
That the discipline was excessive.

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 27th day of October 1987.