

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32123
Docket No. SG-32859
97-3-96-3-203**

The Third Division consisted of the regular members and in addition Referee John H. Abernathy when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(CSX Transportation, Inc. (former Baltimore and
(Ohio Railroad Company)**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation Company (B&O):

Claim on behalf of K.E. Marks for reinstatement to service with his seniority unimpaired, account Carrier violated the current Signalmen’s Agreement, particularly Rule 50, when it failed to provide the Claimant with a fair and impartial investigation and imposed the harsh and excessive discipline of dismissal in connection with an investigation conducted on April 21, 1994. Carrier’s File No. 15(95-156). BRS File Case No. 9806-B&O.”

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

Claimant, a Signal Maintainer, was charged with unauthorized use of a company vehicle, unsafe operation of that vehicle and conduct unbecoming an employee. Following a formal Investigation, Claimant was dismissed from service effective April 20, 1994.

Carrier contended that the record evidence conclusively proved that Claimant was guilty of these charges, and that the serious nature of these offenses warrants permanent dismissal. The Organization contended, both on the property and during the Referee Hearing conducted on May 21, 1997, that the penalty of dismissal was particularly harsh for a 22 year employee with no prior discipline.

The Board reviewed the record, together with the transcript of the Hearing. As a result of that review, the Board concludes that Claimant received a full and fair Hearing, at which he was afforded all substantive and procedural rights guaranteed by Agreement. The Board is also convinced that Claimant was guilty of all charges and that severe discipline was appropriate. Under the particular circumstances presented in this case, however, the Board is not persuaded that permanent dismissal is appropriate.

The Board will grant Claimant an opportunity to prove himself a worthwhile employee. We emphasize that Claimant should consider this rare opportunity as a "last chance" and should, in the future, make every effort to be an exemplary employee, for this Board will not in any future proceedings, for whatever reason, be as considerate of the Organization's position as it is now.

Claimant shall be reinstated with seniority unimpaired, but without pay for time lost or benefits on the conditions that he pass the usual return-to-work physical exams and enter the Carrier's Employee Assistant Program and comply with the prescribed treatment program for a period of five years, during which Claimant will be considered a probationary employee. It will be the Claimant's continuing responsibility to strictly adhere to the requirements of the Employee Assistant Program. During the five year probationary period, which will commence with the date this Award is adopted, Claimant will be subject to random drug and alcohol testing at times chosen by the Carrier. If Claimant does not report for and undergo drug and alcohol screening when ordered to do so, or in the event such a test is confirmed positive, such will be grounds for automatic permanent dismissal without the necessity of a formal Investigation.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

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

Dated at Chicago, Illinois, this 13th day of August 1997.