

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22512  
Docket Number MW-22357

James F. Searce, Referee

PARTIES TO DISPUTE:

(Brotherhood of Maintenance of Way Employees  
(The Baltimore and Ohio Railroad Company

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

(1) The dismissal of Assistant Track Foreman A. C. Bellinger was without just and sufficient cause and on the basis of charges other than that placed against him (System File BALT-W-204/2-MG-1719).

(2) The claimant shall be reinstated to service with seniority unimpaired."

OPINION OF BOARD: Claimant had about four years service as Assistant Track Foreman at the time of the incident which has culminated before this Board. The record indicates he was removed from service after a hearing which concluded that he was guilty of conduct unbecoming an employe, such action occurring on July 28, 1976. On that date the Claimant was assisting his crew in loading "rail anchors" (or "anti-creepers") on the rear of a truck. The Claimant initially had disdained from doing so, contending his assistance was not necessary and/or that he was not feeling well. He was ordered to do so by his superior (the crew foreman). As the loading of the anchors was about to conclude, the Claimant propelled one of the anchors to the other side of the truck, at such a velocity that it broke a slat and glanced in the direction of the foreman. The Claimant thereafter proceeded to the cab of the truck, opened it, got in and slammed the door. He left the premises shortly thereafter.

The Organization contends certain procedural errors by the Carrier and Hearing Officer which, upon review of the record, are considered to be without merit. Particular among them was failure of the Claimant to receive written notice of the hearing. That the Claimant was aware of the hearing was borne out by his presence; additionally, a certified letter was sent the Claimant, but returned marked "moved, left no address." The Carrier is not obliged to do more than attempt "constructive notice" through the best address available.

While the Carrier's disciplinary action must, in this instance, be predicated to an extent upon conjecture, i.e. was the Claimant's

actions before and after "the incident" in concert with the intent attributed to him in the act itself, we find no fault with its conclusions. We surmise that the Claimant's ill-conceived act may have been out of pique and possibly at a time when he might have not been at the height of health, but it is altogether reasonable to expect a better measure of restraint and judgment, of one who is required to lead or direct others, than was demonstrated.

Nonetheless, we conclude that the desired result will be accomplished here by returning the Claimant to service, without back pay, but with his seniority unimpaired. We add the condition that this is a "last chance" opportunity for the Claimant to demonstrate his worth as an employee.

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 Employee involved in this dispute are respectively Carrier and Employee 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 violated.

A W A R D

Claim sustained to the extent set forth in the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

  
Executive Secretary

Dated at Chicago, Illinois, this 17th day of September 1979.