

PUBLIC LAW BOARD NO. 1850

Award No. 20

Docket No. 57

BMWE File BALT-E-116

Carrier File 2-MG-1932

Parties	Brotherhood of Maintenance of Way Employees
to	and
Dispute	The Baltimore and Ohio Railroad Company
Statement of Claim	Claim filed on behalf of Welder Kevin W. Ellis, Baltimore Division, for restoration of his seniority as a result of being dismissed from the services of the Carrier following a hearing held on January 28, 1977 at which time he was found guilty of unauthorized absences on January 11, 12, 13, 14 and 17, 1977.
Findings	<p>The Board, after hearing upon the whole record and all evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated October 27, 1976, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.</p> <p>Claimant Welder had been employed in Carrier's service for some two years, when, as a result of an investigation held on January 28, 1977, which was held because of Claimants' taking unauthorized absences on January 11, 12, 13, 14 and 17, 1977, he was advised, under date of February 14, 1977, in pertinent part:</p>


"Please be advised that you have been found guilty as charged and effective of the close of business on Tuesday, February 15, 1977, you will be dismissed from service and your name will be removed from the seniority roster."


Here, there is no question as to Claimant's guilt.

The question is merely whether the discipline assessed was excessive. Ordinarily, the Board would not interfere. However, the record reflects mitigating circumstances which serve to indicate that Claimant should be afforded a last opportunity, but under certain restrictions. Consequently, Claimant will be restored to service without any pay on a probationary basis for a period of eight (8) months. Such probationary period does not, of course, deny Claimant any right under his discipline rule. Claimant must first pass the necessary return to service physical examination. Thereafter, he then must meet with his Local Representative and the Carrier's designated Representative to review his service record in order that Claimant will fully understand his responsibility in connection with his requirement to protect his position and his obligation to seek permission if such were sincerely necessary for any potential absence.

Award Claim disposed of as per findings.
Order Carrier is directed to make this Award effective within
 thirty (30) days of date of issuance shown below.


Fred Wurpel, Jr., Employee Member


W. C. Comiskey, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member

Issued at Salem, New Jersey, April 15, 1980.