

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 35723  
Docket No. MW-34778  
01-3-98-3-488

The Third Division consisted of the regular members and in addition Referee Robert L. Douglas when award was rendered.

(Brotherhood of Maintenance of Way Employees  
PARTIES TO DISPUTE: (  
(Union Pacific Railroad Company (former Southern  
( Pacific Transportation Company (Eastern Lines))

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The ten (10) day suspension imposed upon Machine Operator R. E. McKinley for alleged violation of Rules 1.1, 1.1.2 and 1.6 on December 18, 1996 was arbitrary, capricious and on the basis of unproven charges (System File MW-97-173/1069488 SPE).
- (2) The claim as presented by Second Vice Chairman E. Posas, Jr. on March 5, 1997 to Mr. D. W. Clark shall be allowed as presented because said claim was not disallowed by Mr. D. W. Clark in accordance with Article 15, Section 1(a).
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, the Claimant shall be allowed the remedy prescribed by the parties in Section 7 of Article 14."

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.

Article 15 (Time Limits for Presenting and Progressing Claims or Grievances) provides, in pertinent part, that:

"Section 1 (a) All claims or grievances must be presented in writing by or on behalf of the employee involved, to the officer of the Carrier authorized to receive same within sixty (60) days from the date of the occurrence on which the claim or grievance is based. Should any such claim or grievance be disallowed, the Carrier shall, within sixty (60) days from the date same is filed, notify whoever filed the claim or grievance (the employee or his representative) in writing of the reasons for such disallowance. If not so notified, the claim or grievance shall be allowed as presented, but this shall not be considered as a precedent or waiver of the contentions of the Carrier as to other similar claims or grievances."

A careful review of the record indicates that the Director of Engineering Quality Management sent a denial letter, dated May 2, 1997, to the Second Vice Chairman of the Organization at the wrong address. Specifically, the letter contained an address in LaGrande, Texas, whereas the Second Vice Chairman of the Organization whose correspondence generated the May 2, 1997 letter had a mailing address in LaGrange, Texas. In the absence of any independent evidence from the Carrier to prove that the Organization had received the May 2, 1997 letter, the Carrier perforce failed to comply with the requirements of Article 15. The claim is therefore allowed as presented, but this shall not be considered as a precedent or waiver of the contentions of the Carrier as to other similar claims or grievances.

With respect to a remedy, Article 14, Section 7 limits any payment to the Claimant to the working hours that the Claimant "actually lost" as a result of the unsustained charge. In the present case, the record indicates that the Claimant apparently had sustained an injury to his right shoulder, hip, and knees. In the absence of any evidence in the record that the Claimant was physically able to work on the relevant days, Article 14, Section 7 precludes a monetary remedy to the Claimant.

**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 24th day of October, 2001.