

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 33958
Docket No. MW-34422
00-3-98-3-25

The Third Division consisted of the regular members and in addition Referee Stephen B. Rubin when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Union Pacific Railroad Company (former Missouri-Kansas-
(Texas Railroad Company)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier placed a letter of counsel (employee record indicates a letter of reprimand) in Trackman M. Mobley's personal record on November 3, 1996 (System File 4-160/1040646-D MKT).
- (2) As a consequence of the violation referred to in Part (1) above, Trackman M. Mobley shall have his record cleared."

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.

On or about November 3, 1996 the Claimant received the following letter dated August 5, 1996 and entitled Letter of Counsel from Supervisor T. W. Epperson:

"It has been brought to my attention that on the dates of July 31 & August 1, 1996 you did not report for work or request to be absent from your assignment. As you know you must contact me personally before the start of your work shift to secure permission from me to be absent from your job. You should also understand that if you fail to contact me as instructed that this is in possible violation of Rule 1.15 of General Code of Operating Rules dated April 10, 1994.

This letter of counsel will become part of your personal record and hopefully will reacquaint you with your obligations as an employee to demonstrate that you can be dependable and responsible and eliminate the need for any further action."

On or about November 5, 1996 the Claimant requested a Hearing on this alleged discipline. The Carrier denied a Hearing on the grounds that the letter did not constitute "discipline" as that term is used in the Agreement.

The Organization asserts that the Claimant was denied his due process rights under the Agreement and specifically was denied the Hearing to which one who has been disciplined is entitled. The Organization argues that the Supervisor's letter makes a factual finding that the Claimant had been absent on two dates. The Carrier persists in asserting that the letter constituted no more than a reminder of the Rules regarding absenteeism and, as such, was not discipline.

It is unnecessary to resolve the question of whether the purported Letter of Counsel was in fact discipline. There is no dispute that the first notice that the Claimant had of the allegations in the letter at issue was on or about November 3, 1996, three months after the dates of the alleged absences. This three-month delay in giving the purported Letter of Counsel to the Claimant precluded an effective response by him and denied him due process under the Agreement.

The letter must be removed from the Claimant's personal file.

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AWARD

Claim sustained.

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 22nd day of February, 2000.