

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26226
Docket Number CL-26274

Gil Vernon, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station **Employees**

PARTIES TO DISPUTE:

(
(Missouri Pacific Railroad Company

STATEMENT OF CLAIM: "Claim of the **System Committee** of the Brotherhood (GL-9986)
that:

1. Carrier violated the agreement between the parties, in particular Rule 18 (k), when it denied written request of Clerk Charlotte Garrett for an unjust treatment hearing (Carrier's File 280-1287).

2. Carrier shall now be required to compensate Clerk Garrett for eight (8) hours pay beginning February 26, 1984, and continuing each day thereafter until she is given the unjust **treatment** hearing requested."

OPINION OF BOARD: At the outset it must be stated that on the property the Claim before the Board was limited to a contention that the Claimant was improperly denied an Unjust Treatment Hearing pursuant to Rule 18(k) and the only requested **remedy** was that the Hearing **be** granted. Accordingly, the Board must limit its consideration to this issue as it was the only matter handled **between** the Parties on the property.

On February 26, 1984, the Claimant made a request for an **Unjust** Treatment Hearing Under Rule 18(k). The basis of her request was an accusation that a Management **employee** had degraded her in public (**a** sexual slur) and had improperly removed her from the Extra Board. The Carrier denied the request and a protest was lodged, denied, and appealed ultimately to the Board.

Rule 18(k) states:

"An **employee** who considers himself unjustly treated otherwise than covered by these rules shall have the **same** right of hearing and appeal as herein provided, if written request thereof is made to his **immediate** supervisor within seven (7) days of the cause for **complaint**."

It is understood, however, that an **employee's** disqualification **from** a position (including rejection of application for a vacancy or denial of request to displace a junior **employee**) is subject to this rule."

It is the opinion of the **Board** that there is no basis for the Carrier having denied the Claimant's request. The fact that the Carrier made a unilateral investigation and determination of what it viewed to be the merits of the accusation, is essentially irrelevant. The Claimant plainly and clearly is entitled to a Rearing to air her canplaint. Therefore, the Carrier is directed to grant the Claimant's request for an 18(k) Hearing.

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 **Employees** involved in this dispute are respectively Carrier and **Employees** 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 in accordance with the **Opinion**.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 15th day of January 1987.

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

INTERPRETATION NO. 1 TO AWARD NO. 26226

DOCKET NO. CL-26274

NAME OF ORGANIZATION: Brotherhood of Railway, Airline and Steamship Clerks
Freight Handlers, Express and Station **Employees**

NAME OF CARRIER: Missouri Pacific Railroad Company

On April 6, 1987, the Organization filed a request seeking an Interpretation of the Board's Award 26226 (Docket CL-26274) issued January 15, 1987.

It is instructive to draw attention to the following portion of the Award:

"It is the opinion of the Board that there is no basis for the Carrier having denied the **Claimant's request**. The **fact** that the **Carrier** made a unilateral investigation and determination of what it viewed to be the merits of the accusation, is essentially irrelevant. The Claimant plainly and clearly is entitled to a hearing to air her complaint. Therefore, the Carrier is directed to grant the Claimant's request for an 18(k) hearing."

Basically, the question presented for Interpretation is whether the Award contemplated that the Carrier render a decision concerning the outcome of the **hearing** which the record reflects was ultimately held March 2, 1987.

The answer **to** the question is obviously--yes. **It** is patently clear that part and parcel of the requirement to conduct a hearing is to render a decision. Constructively, a hearing cannot be considered completed until a decision is rendered. The purpose of a hearing is to make a finding not merely to elicit testimony. Thus, if a decision has not been rendered **as** of the date of this Interpretation, the Carrier is ordered to do so.

Referee Gil Vernon, who sat with the Division as the Neutral member when Award No. 26226 was adopted, also participated **with the** Division in making this Interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 27th day of October 1987.