

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 35322  
Docket No. MW-34256  
01-3-97-3-753**

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

**PARTIES TO DISPUTE:** (Brotherhood of Maintenance of Way Employees  
(Union Pacific Railroad Company (former Oklahoma,  
( Kansas & Texas Railroad Company)

**STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Brotherhood that:**

- (1) The dismissal of Foreman J. E. Cole for alleged violation of Union Pacific Rules 1.3.1 and 1.5 on June 18, 1996, by letter dated June 27, 1996, was arbitrary, capricious, without just and sufficient cause, on the basis of unproven charges and in violation of the Agreement (System File MW-96-37-OKT/1022411-D OKT).**
- (2) As a consequence of the violation referred to in Part (1) above, the Claimant shall be reinstated to service with seniority and all other rights impaired, his record shall be cleared of any reference to the incident involved here and he shall be compensated for all wage loss suffered beginning June 18, 1996 and continuing until he is returned to service.”**

**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.**

**The Carrier previously had dismissed the Claimant from service because the Claimant had tested positive during a Department of Transportation mandated drug and alcohol test on August 24, 1995. The Claimant then executed a Probationary Reinstatement Agreement that covered 12 months. The Claimant also executed a Personal Program that contained specified General Agreements. As with other employees who occasionally enter such agreements that involve the Employee Assistance Program of the Carrier, the Agreement imposed certain obligations on the Claimant. After complying with certain initial conditions, the Claimant returned to service on November 22, 1995. The Carrier subsequently concluded that the Claimant had failed to comply with some of the obligations. As a result, the Carrier returned the Claimant to the status of a dismissed employee. The Organization challenged the Carrier's action.**

**A careful review of the record indicates that the Probationary Reinstatement Agreement and a related Companion Agreement required the Claimant to maintain a daily journal, to attend two Alcoholics Anonymous meetings each week, and to notify the Employee Assistance Manager of any change of the Claimant's telephone number. The record contains evidence that the Employee Assistance Manager determined on June 11, 1996, that the Claimant had failed to provide a current telephone number to the Employee Assistance Manager and that the Employee Assistance Manager had learned from the Claimant on or about June 18, 1996 that the Claimant had failed to attend Alcoholics Anonymous meetings and had failed to maintain a daily journal. The record omits any indication that the Claimant had sought to modify the requirements of the Probationary Reinstatement Agreement or had attempted to explain his failure to comply with the requirements. Under these circumstances the Carrier had the requisite basis to conclude that the Claimant had failed to comply with his ongoing obligations in connection with the Probationary Reinstatement Agreement and the related documents. The Carrier therefore had a right to return the Claimant to the status of a dismissed employee.**

**The record further indicates that the Carrier complied with the required procedural obligations related to the treatment of the Claimant. With respect to the reinstatement of the Claimant, the record omits any indication that the Claimant had**

sought Organization representation. In the absence of any evidence of such a request, the absence of Organization representation many months before the events, which triggered the Carrier's decision to return the Claimant to the status of a dismissed employee, fails to provide a basis to reverse the actions of the Carrier.

**AWARD**

**Claim denied.**

**ORDER**

**This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.**

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
**By Order of Third Division**

**Dated at Chicago, Illinois, this 16th day of February, 2001.**