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**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35738
Docket No. MW-33606
01-3-97-3-29**

The Third Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Union Pacific Railroad Company (former Oklahoma,
(Kansas and Texas Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier improperly withheld Mr. J. E. Cole from service following his release for service on October 12, 1995 through November 22, 1995 (System File MW-96-16-OKT/960170 OKT)**
- (2) As a consequence of the violation referred to in Part (1) above, Mr. J. E. Cole shall be compensated for one hundred eighty-four (184) hours at his straight time rate of pay as a result of the Carrier's actions.”**

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.

Following a first-time positive random drug test on August 24, 1995 and citations for allegedly violating Carrier Rules and the Drug and Alcohol Policy, on August 28, 1995 the Claimant waived disciplinary Investigation and accepted discharge under the Companion Agreement, with anticipation of later reinstatement to employment conditioned on his satisfactory completion and release from the Employee Assistance Program (EAP). Apparently in addition to his EAP-administered treatment plan, the Claimant enrolled himself at Freedom House, a rehabilitation facility in Austin, Texas, from which he was discharged on or about October 12, 1995. Following completion of arrangements for his aftercare treatment and after confirmation of the negative results of a November 7, 1995 return-to-work drug test, EAP notified the Carrier that the Claimant was released for return to work on November 21, 1995. He was reinstated to service the next day, on November 22, 1995, but the Organization then filed the instant claim asserting that he had been "improperly withheld from service" between October 12, and November 22, 1995."

The record fails to support the charge that the Claimant's rights were violated or that the Carrier acted unreasonably, discriminatory or otherwise improperly in this case. The terms of the Claimant's return to service are set forth in the Conditional Reinstatement Agreement that he entered into with the Carrier on August 28, 1995. Among other provisions, that Agreement conditioned his return to service on advice to the Carrier that he had "successfully completed the education, counseling and/or treatment determined to be necessary by the Employee Assistance Program, including any drug and alcohol testing requirements of the program, and you have tested negative for drugs (and alcohol, if appropriate) in the re-qualifying test administered and reviewed by the office of the UP Medical Director." The undisputed record shows that the EAP clearance was issued on November 21, 1995 and that the Claimant was returned to service the next day. There is no showing of any Agreement violation or abuse of discretion by the Carrier in this case and the claim that he was "improperly withheld from service between October 12 and November 22, 1995" is therefore dismissed for failure of proof. [It appears from this record that several months following the November 22, 1995 reinstatement, the Claimant was found to be in noncompliance with various provisions of his Conditional Reinstatement Agreement and returned to a dismissed status. The facts and circumstances concerning the reasons for his return to dismissed status are not the subject of the instant claim and no opinion thereon is expressed or implied in this decision].

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AWARD

Claim dismissed.

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 24th day of October, 2001.