

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26383
Docket Number MW-26150

Marty E. Zusman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Consolidated Rail Corporation

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement when it disciplined (reprimand "AW Warning Letter" dated February 9, 1983') Repairman R. C. Greene without agreement in writing between him, his union representative and the Carrier's authorized official and/or without benefit of a hearing as stipulated in Section 2(a) of Agreement Rule 27 (System Docket CR-313).

2. The 'AW Warning Letter' mentioned in Part (1) hereof shall be removed from the claimant's record."

OPINION OF BOARD: Claimant was unable to report off on February 7, 1983, prior to the 8:00 A.M. required deadline. Claimant maintained he was ill and had made three attempted calls. He was unable to get through.

The Carrier issued an "Unauthorized Absence Letter" to the Claimant for failure to reach the office and report off prior to the deadline. It is the Carrier's position that it has complied with Rule 27, Section 1. The Organization argues that the Carrier has violated Rule 27, Section 2 in that the Claimant was denied a Hearing.

The merits of this instant case depend upon an interpretation of Rule 27 of the Agreement which has already been heard by this Board and decided by Third Division Award No. 26382.

In that case by reference, as in this, the Board interprets Section 1 of Rule 27 to apply to Hearings and to require a Hearing, and a written notice before an unfavorable mark is entered into the employee's discipline record. As such, this Board sustains the Organization's Claim.

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 Employee involved in this dispute are respectively Carrier and Employee 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

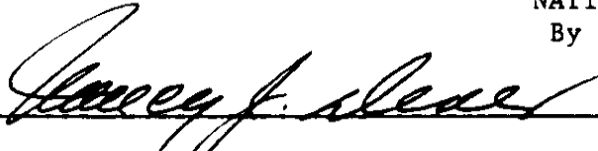
That the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 25th day of June 1987.

CARRIER MEMBERS' DISSENT
TO
AWARD NOS. 26382, 26383
DOCKET NOS. MW-26149, MW-26150
(Referee Zusman)

The Board majority has erred in their interpretation of Rule 27.

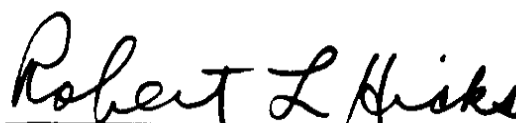
The Board majority has seriously violated the well settled principle that the Adjustment Board does not make new agreements for the parties, nor insert or delete words under the guise of construing ambiguous provisions. (Third Division Award Nos. 20276, 21221).

While Rule 27, Sections 1 and 2 are clearly interrelated, the contract is most specific in that Section 2 is an exception to the hearing requirement of Section 1. Section 2 only provides that the required Section 1 hearing may be waived when the parties agree on the employee's responsibility and the discipline to be assessed.

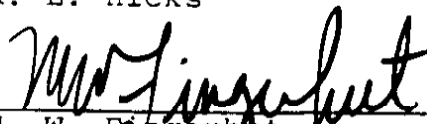
Thus, Section 2 can only become involved after the employee is notified to appear for a hearing under Section 1. In the case at hand, the employee was not ordered to appear for a hearing because there was no intent to suspend or dismiss him for his dereliction. Section 1 is clear that a hearing is required only if the employee may be subject to suspension or dismissal. There is simply no requirement in Section 1 to hold a hearing when an unfavorable mark is to be placed on the employee's discipline record. The only restriction is that such a mark cannot be made without written notice thereof to the employee. Consequently, even if the "Unauthorized Absence Letter" issued to the claimant could be considered as an unfavorable mark on his discipline record, under no circumstances would such action require a hearing.

A vigorous dissent is required because of the erroneous interpretation placed on Rule 27 by the majority that this rule grants the right to a hearing before an unfavorable mark becomes a permanent part of a discipline record. They have done violence to the language and construction of the rule and the clear intent of the negotiators.

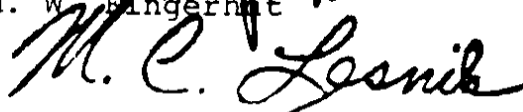
For the above reasons, we do, therefore, vigorously dissent.



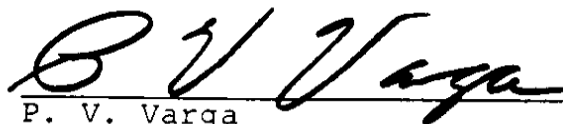
R. L. Hicks



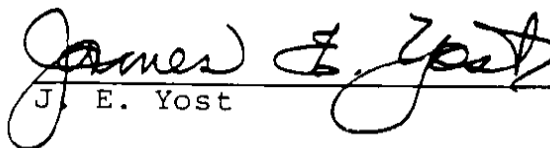
M. W. Fingerhut



M. C. Lesnik



P. V. Varga



J. E. Yost