

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

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 reprimand imposed upon Repairman A. Edgell by an 'Absentee Discussion' dated November 2, 1984 by Shop Engineer F. Bucceri and Equipment Engineer J. E. Jones was improper and in violation of the Agreement (System Docket CR-1323).

(2) Said 'Absentee Discussion' shall be expunged from the claimant's personal record."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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 waived right of appearance at hearing thereon.

On November 2, 1984, the Claimant, a Repairman at the Carrier's Canton Repair Shop, met with the Shop and Equipment Engineers. His absences of October 3 and 23, 1984, plus leaving work on October 9, 1984, were discussed. A form copy entitled "Absentee Discussion" documenting these facts was prepared and placed in the Claimant's shop records. A claim was filed on November 26, 1984, contending a written reprimand had been issued. The Organization argues this discipline was issued without benefit of a hearing as required by Rule 27, Section 2. The Organization insists there is only one condition under which an employee may be disciplined by reprimand without a hearing and that is when the employee, Organization, and the Carrier agree in writing to the employee's responsibility and discipline imposed.

The Carrier argues the record of November 2, 1984, is simply documentation that the Claimant was counselled about his attendance, and it is consistent with its Attendance Improvement Program.

Rule 27 is set forth below in pertinent part:

"Rule 27, Section 1. Hearings

(a) Except as provided in Section 2 of this Rule, employees shall not be suspended nor dismissed from service without a fair and impartial hearing nor will an unfavorable mark be placed upon their discipline record without written notice thereof.

Rule 27, Section 2. Alternative to hearings.

(a) An employee may be disciplined by reprimand or suspension without a hearing, when the involved employee, his union representative and the authorized official of the company agree, in writing to the responsibility of the employee and the discipline to be imposed."

From the above language, it is clear Rule 27, Section 1 imposes a positive duty to hold a hearing in cases of suspension and dismissal. It further provides that an "unfavorable mark" will not be placed upon an employee's discipline record without written notice. In Third Division Award 26382, in referring to an "Unauthorized Absence Letter," the Board equated a reprimand with an "unfavorable mark." It is evident from a comparison of Rule 27, Sections 1 and 2 that the only use of the word "reprimand" is found in Section 2. Since an "unfavorable mark" may be entered into an employee's discipline record if the employee received written notice, a "reprimand," although not defined by the parties, may be issued without a hearing if the parties agree in accordance with the provisions of Section 2. Since an "unfavorable mark" may be issued without agreement, logic requires a finding the two terms were not intended to be synonymous.

The Organization has the burden of establishing the Carrier issued the Claimant a reprimand. As defined by the American Heritage Dictionary, a reprimand means "to rebuke or censure severely." The document placed into the Claimant's shop file is no more than a documented recitation of the discussion and warning given on November 2, 1984. The Claimant was not formally charged nor accused of an Agreement violation. He was warned his attendance had to improve. There is no evidence the written documentation of the discussion was entered into the Claimant's discipline file. Had it, the absentee discussion, accompanied by written notice, could be characterized as an "unfavorable mark" as defined by Rule 27, Section 1.

In conclusion, we find the Organization has not backed up its assertions with probative evidence establishing the Claimant was issued a reprimand.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 29th day of March 1989.