

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 28845
Docket No. MW-29472
91-3-90-3-401

The Third Division consisted of the regular members and in addition Referee Carol J. Zamperini when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Union Pacific Railroad Company (former Missouri Pacific Railroad Company)

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

(1) The Agreement was violated when, beginning March 9, 1989, the Carrier withheld Messrs. J. R. Shipley, Jr. and J. B. Scriber, Jr. from service without the due process benefits stipulated in Rule 12 (Carrier's File 890624 MPR).

(2) As a consequence of the aforesaid violation, Messrs. J. R. Shipley, Jr. and J. B. Scriber, Jr. shall each be allowed:

'... payment of all wage loss suffered, including any overtime, Holidays, etc, falling therein, and restoration of seniority, vacation, insurance, and all other benefits due them, from March 9, 1989, continuing thereafter, until 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 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 March 9, 1989, the Claimants failed to arrive for roll call. This was the second time in four days the Claimants failed to report at the scheduled starting time. In the first instance, the Rail Gang Supervisor proceeded to the bunk car and found the Claimants asleep. He attempted, but, had difficulty arousing them. He believed, as he stated subsequently, the Claimants were "under the influence of something." He removed them from service for three days on a Rule G violation. When they returned to work they agreed to keep "their noses clean."

When they failed to show up the second time, three employees on their gang complained to the supervisor that the two, along with one other employee, had returned to the bunk car around 3:00 A.M. Allegedly, they were loud, boisterous and obviously drunk. When he confronted them later, they denied the accusations and indicated it was someone else making the noise. At this point, the Supervisor gave the Claimants the option of entering the By-Pass Program or being charged with a Rule G violation and submitting to an Investigation. The Claimants accepted the EAP Program.

The Claimants first contacted EAP Counselor L. Myers and submitted to appropriate tests at a hospital. The test results were sent to Myers at Little Rock, Arkansas. Before the tests were properly analyzed, Myers retired and another Counselor replaced him. During the first week of April, the Claimants contacted the Counselor to receive the test results and find out when they could return to work. At first he was unable to find the test results and requested the Claimants submit to another evaluation, which was completed on May 1, 1989. Reluctantly they agreed. In the interim, the first test was found. The two test results conflicted with one another. Regardless, after a series of phone conversations, the Claimants were released to return to work on June 26, 1989. Prior to this action, the Organization submitted a claim on behalf of the Claimants asking for payment of all wages they would have earned had they been returned to work following the first tests.

The By-Pass Program originated by the Parties has been well received within the industry. It has become a way of dealing with alcohol and other drug problems which have become prevalent in our society. Clearly, the Parties determined the best way of handling alcohol/drug problems was through a negotiated plan. According to all indications, the plan has been very successful.

If an employee is alleged to have a substance abuse problem, he can be identified by another employee, a supervisor or voluntarily. When approached by management, s/he can choose whether or not s/he wants to submit to an Investigation and possible discharge for a Rule G violation or voluntarily enter into an EAP Program. If s/he chooses the latter, there is no stigma attached to the incident; the employee's record remains clear. However, in exchange for this alternative, the employee who chooses the EAP Program relinquishes an element of control. Basically, s/he allows an EAP counselor to determine when and actually if, s/he will return to work.

In the present case, the Claimants involved were given a choice of submitting to an Investigation or going through the program. They chose the latter. Once they did, they placed themselves under the rules governing the program. One such rule was that they would not file any claims over time and/or wages and benefits lost as a result of being held out of service.

This Board is not only reticent, but without authority to alter the provisions of the By-Pass Agreement. It is an instrument negotiated by the Parties. There can be no modification of the negotiated terms of that Agreement without ratification by both sides. Admittedly, there may occur, from time to time, some administrative problems with the program. If that is the case, the Parties must decide whether or not the problems are serious enough to bring the provisions of the program "back to the table."

Generally, when there is a dispute concerning the handling of individual cases, those matters should be dealt with on the property. Not only will this enhance the relationship of the Parties, but will preserve the nature of the negotiated EAP Program.


In the instant matter, it is simply inappropriate to allow the Claimants to file a Claim once they voluntarily entered the program.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 25th day of June 1991.