

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33569
Docket No. MW-34157
99-3-97-3-714**

The Third Division consisted of the regular members and in addition Referee Ann S. Kenis when award was rendered.

**(Brotherhood of Maintenance of Way Employes
PARTIES TO DISPUTE: (
(CSX Transportation, Inc.**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The agreement was violated when the Carrier improperly issued a letter of caution on August 7, 1996 to Mr. R.L. Peake on the basis of a coaching/counseling session that never took place [System File S-TC-2178/12 (96-1323) CSX].**
- (2) As a consequence of the violation referred to in Part (1) above, the letter and all references to the matter contained therein shall be removed from the Claimant’s 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 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 Claimant herein seeks removal of a letter dated August 7, 1996 from his record. The letter refers to a personal injury incurred by the Claimant on that date and confirms that a conference was held stressing the need for safety in the performance of the Claimant's job duties. The Claimant contends that the coaching/counseling session referred to in the letter never took place.

A claim was thereafter filed on the Claimant's behalf. As a threshold matter, we must address the Carrier's contention which was raised on the property, that the claim is time-barred under the provisions of Rule 40, Section 1. That provision reads in pertinent part:

"(1) All claims or grievances must be presented in writing by or on behalf of the employee involved, to the officer of the Carrier authorized to receive same, within 60 days from the date of the occurrence on which the claim or grievance is based."

The claim before the Board was originally filed by the Organization on October 15, 1996 and was received by the Carrier on October 21, 1996. The coaching/counseling letter, dated August 7, is unquestionably outside the 60-day time limit set forth above. As such, the claim is outside the jurisdiction of the Board and it must be dismissed on procedural grounds without consideration of the merits. See, Second Division Award 5018; Third Division Award 27327.

There is also a jurisdictional obstacle that prevents the Board from considering the instant claim. On June 28, 1999, the Claimant signed a release in full settlement of all claims, causes of action, and liabilities in connection with the personal injuries he received on or about August 7, 1996. This claim arises from that same personal injury. It is therefore encompassed within the terms of the release and provides an additional basis for dismissal. The Board has ruled on numerous occasions that a claim is moot in the face of such a waiver. See Third Division Awards 32645, 32573, 31915, 30026.

AWARD

Claim dismissed.

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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 20th day of October 1999.