

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 44903  
Docket No. MW-47178  
23-3-NRAB-00003-220057**

**The Third Division consisted of the regular members and in addition Referee Patricia T. Bittel when award was rendered.**

**(Brotherhood of Maintenance of Way Employees Division –  
(IBT Rail Conference**

**PARTIES TO DISPUTE: (  
(BNSF Railway Company**

**STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Brotherhood that:**

- (1) The discipline (coaching and counseling) imposed upon Mr. R. Teniente, by letter dated July 31, 2020, for alleged violation of MWOR 1.13 was on the basis of unproven charges, arbitrary, excessive and in violation of the Agreement (System File C-20-D040-18/10-20-0234 BNR).**
- (2) The appeal\* as presented by letter dated November 13, 2020 to General Director Labor Relations Joe Heenan shall be allowed as presented because said claim was not disallowed by Mr. Heenan in accordance with Rule 42.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimant R. Teniente shall have his record cleared of the charges leveled against him and he shall be compensated for all wage loss suffered.**

**\*The initial letter of claim will be reproduced within our initial submission.”**

**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.

**Factual Background:**

On July 31, 2020 the Claimant was issued a Coaching and Counseling Letter for failure to communicate to the gang that a 6:00 arrival was required.

On September 9, 2020, the Organization filed a claim protesting that the Letter was actually a form of disciplinary action, taken without the required Investigatory Hearing. The claim has been processed for consideration by this Board. In the time following the November 7, 2022 hearing, the parties have resolved between themselves a procedural dispute about the timing and manner of transmission of the Carrier's declination letter.

**Position of Organization:**

The Organization maintains that the Carrier violated the Agreement when it assessed discipline on the Claimant via a Coaching & Counseling letter without the benefit of a fair and impartial investigation as required by the Agreement. It is an uncontested fact that the Claimant was not provided with an investigation, as called for under Rule 40. This provision mandates that such an investigation be held wherever discipline is involved.

As the Organization sees it, the "Coaching & Counseling Letter" plainly accused the Claimant of wrongdoing in connection with a recitation of specific facts that cannot be differentiated from those that would be specified in a letter of charge and discipline. It maintains that arbitral precedent stoutly and clearly holds that accusatory language in an alleged Coaching and Counseling letter marks the letter as discipline and not something short thereof, for which a fair and impartial investigation is due prior to the issuance of such discipline.

In the Organization's assessment, such disciplinary reprimands can only be issued following a fair and impartial investigation at which an employee is proven guilty of a violation.

*Position of Carrier:*

The Carrier alleges that the Claimant was not disciplined, so no investigation was necessary. In its view, a Coaching and Counseling Letter is not disciplinary action, though it may be referenced should disciplinary action be warranted for the same problem in the future. It points out that the Organization has argued for such letters in lieu of actual disciplinary action, yet its position here is antithetical. It insists that such letters merely record information or instructions given to employees.

*Analysis:*

As stated by the Carrier's position, the Board agrees that a Coaching and Counseling letter is not considered a disciplinary action. As such, a careful review of the record convinces the Board that the Organization has failed to sustain its burden of proof in this case. Accordingly, the claim before the Board must be denied.

**AWARD**

Claim denied.

**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 21<sup>st</sup> day of April 2023.