

PUBLIC LAW BOARD NO. 5606

PARTIES) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
) DIVISION OF THE INT'L BROTHERHOOD OF TEAMSTERS
 TO)
DISPUTE) SPRINGFIELD TERMINAL RAILWAY COMPANY

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that in violation of Article 26 and Article 33 of the Rules Agreement the Carrier did not have a right to issue a letter of reprimand without providing Claimant David L. McCaw benefit of a fair and impartial investigation. The letter should be removed from Claimant's record.

FINDINGS:

The Board, after hearing upon the whole record and all the evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended; this Board has jurisdiction over the dispute involved herein; and, the parties were given due notice of hearing thereon.

Under date of February 20, 2007 the Carrier Superintendent-Mechanical East issued a hand delivered letter to Claimant that reads as follows:

A review of the past three months' attendance records reveals a *discernible pattern of absenteeism*. You have been absent on at least three (3) occasions either the day preceding or the day after your scheduled rest days or scheduled days off, i.e., paid personal day, vacation day, etc., during this period. Our records indicate the following absences:

1. 01/08/07 day after rest days
2. 01/09/07 2 days after rest days
3. 01/10/07 3 days after rest days

This pattern of absences will not be tolerated. The next absence of this type, prior to December 21, 2007 may result in formal disciplinary action. Hopefully this letter will be sufficient notice and will forestall the need for any further action concerning this matter. If I can be of help, you may with your Local Representative's assistance, make an appointment to discuss this subject. Also, please remember there is an Employee Assistance Program available to all employees that can be reached at 1-800-1834.

Claimant is shown to have affixed his signature to the above referenced letter under date of February 21, 2006.

Subsequently, by letter of March 15, 2007, the Organization filed the claim at issue, asserting that Claimant was instructed by the Superintendent that he had to sign the letter. The Organization submitted that Claimant was absent from service because of illness on January 8, 9, and 10, 2007; contacted his supervisor, and requested that he be allowed to take sick days for the time off; and, Claimant was, in fact, paid three sick leave days for the time at issue in pursuance of Article 33. Further, the Organization pointed out that the Carrier letter stated that in the last three months Claimant was only absent the three sick leave days.

The Organization also protested the letter as threatening in nature and constituting the issuance of a letter of a letter of reprimand without benefit of a fair and impartial investigation in accordance with Article 26.

Although the Board recognizes the right of the Carrier to issue cautionary letters of warnings to employees pertaining to such matters as excessive absenteeism, it does not appear from the record before the Board that sufficient reason existed for the Carrier to have done so in this particular instance. Claimant's consecutive days of absence account a single period of sickness does not fall within the purview of what the Carrier has described as a *discernible pattern of absences*. In this respect, the Superintendent stated the following in denial of the claim: "A discernible pattern is created when an employee calls in sick on days before or after their rest days at least three times in one quarter."

In the circumstances, the Board will direct that the February 20, 2007 letter be removed from Claimant's file.

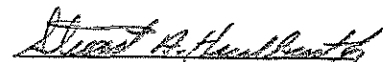
AWARD: Claim sustained.



Robert E. Peterson
Chair & Neutral Member



Anthony F. Lomanto
Carrier Member



Stuart A. Hulburt, Jr.
Organization Member

North Billerica, MA

Dated Sept. 16, 2008