

Award No. 650  
Case No. 650

PUBLIC LAW BOARD NO. 5383

BROTHERHOOD OF LOCOMOTIVE ENGINEERS	)	
	)	
vs.	)	Parties to Dispute
	)	
UNION PACIFIC RAILROAD COMPANY	)	

STATEMENT OF CLAIM:

Claim of Engineer B. J. Mohler, Social Security No. 345-56-4018, CNW Eastern Seniority District No. 1, for removal of Letter of Counsel issued by the Senior Manager of Terminal Operations, C. F. Biron, dated January 30, 1997. Claim premised upon BLE/UP System Discipline Agreement effective June 1, 1996. Copy attached as Employee's Exhibit A.

FINDINGS

Upon the whole record and all the evidence, the Board finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, and that the Board is duly constituted by agreement and has jurisdiction of the parties and of the subject matter.

Under date of January 30, 1997, the Carrier's supervision wrote Claimant Engineer a "Letter of Counsel" reading as follows:

"CMS records indicate that on January 14, 1997 you were called for Suburban Assignment 7312. They called you a total of six (6) times, a message was left; however, you did not respond, and therefore missed a call. Rule 1.16 entitled "Subject to Call" reads as follows:

'Employees subject to call must indicate where they can be reached and must not be absent from their calling place without notifying those required to call them.'

I would suggest you review this rule. If you have any questions, please contact me. Further violations of this nature will result in your being placed in the Upgrade System."

The Employees request that the above Letter of Counsel be withdrawn and removed from Claimant's personal file since this is not provided for in the Carrier's Upgrade Discipline System. It is stated that the System requires that an investigation into the incident be conducted prior to the

issuance of discipline unless the employee consents to a waiver of the investigation.

The Carrier declined to remove the letter from Claimant's file, stating as follows:

"Letters of counsel are not referenced in the UPGRADE Discipline Policy inasmuch as they are not discipline. A letter of counsel is simply a method of communicating with the employee and a letter is placed upon his personal file to document that this communication took place."

A case similar to the instant dispute was decided on this Carrier recently. In its Award No. 6, Public Law Board No. 6149 (Cook) concluded that a Letter of Counsel sent to an employee "can be construed as discipline which was not assessed in accordance with the discipline rule".

We do not find the doctrine of this Award to be palpably erroneous and we accept its application here. We also adopt that part of the Award stating the Board does not intend "to abridge the Carrier's right to confer or communicate, either verbally or in writing, with its employees concerning specific incidents or questions of performance".

AWARD

Claim is sustained.

ORDER

The Carrier is ordered to make this Award effective within thirty (30) days from the date shown below.

B. D. Lane Arthur  
Employee Member

W. J. Gonzalez  
Carrier Member

H. Deely  
Chairman and Neutral Member

Dated: 2-16-99