

PUBLIC LAW BOARD NO. 7660

Brotherhood of Maintenance
of Way Employees Division - IBT

and

Union Pacific Railroad

Case No: 129
Award No: 129

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when the Carrier unjustly treated Mr. A. Jass by assessing him a formal coaching and recorded such in his employment record, by letter dated July 26, 2017, for alleged events occurring on July 24 and 25, 2017 (System File B-1748U-206/1693510 UPS).
2. The Agreement was further violated when the Carrier refused to convene a Rule 48 unjust treatment conference which was requested by the Organization by letter dated August 4, 2017.
3. As a consequence of the violations referred to in Parts 1 and/or 2 above, the Carrier shall remove the letter completely from Claimant A. Jass’ employment file, the alleged violation shall be expunged from his employment record and he shall be made whole for any and all loss.”

FINDINGS:

Upon the whole record, after hearing, this Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

At the time of incident, the Claimant was assigned as a System Speed Swing Operator on Gang 8515. The Claimant was released from his prior assignment on July 15, 2017. Gang 8515 was working a T-2 compressed half work schedule, and the assigned workdays for the second half of July 2017 were July 24th – July 31st. The Carrier alleged the Claimant failed to report to work on both July 24 and July 25, 2017. As a result, the Carrier supplied the Claimant with an Attendance Alert and Advisory letter dated July 26, 2017.

On August 4, 2017, the Organization made a formal request for an unjust treatment conference pursuant to Rule 48(n) of the Agreement based upon the Attendance Alert and Advisory letter noted above. The Organization's request for an unjust treatment hearing went unanswered and was subsequently denied by the Carrier. The Organization then filed claim on the matter, which is now before the Board.

The Organization argues a) the Carrier violated the Agreement when it refused to grant the Claimant an unjust treatment hearing per Rule 48(n), b) the Carrier's defense against denying the unjust treatment hearing is disingenuous and without merit, and c) the Claimant had 5 working days to report for duty under Rule 48(k).

The Carrier argues a) the Carrier has the managerial right to have an attendance policy and to coach/conference and train its employees; such is not to be considered unjust treatment, b) the Organization failed to follow the appropriate method to challenge the Claimant's coaching, and c) the Organization failed to meet its burden of proof.

Based upon a thorough review of the record, and the specific facts presented here, the Board finds nothing in the agreement that requires the Carrier to provide an unjust treatment hearing to the Claimant in a coaching or training matter such as this.

Turning to the merits, the Organization argues that under Rule 48(k), employees have 5 working days to report or they will forfeit their seniority and employment relationship. The Organization argues the Claimant reported to his assigned position after being released from his former position within the required five working days contemplated in Rule 48(k).

Rule 48(k) states the following:

"...Employees absenting themselves from their assignments for five (5) consecutive working days without proper authority will be considered as voluntarily forfeiting their seniority rights and employment relationship, unless justifiable reason is shown as to why proper authority was not obtained..."

Rule 48(k) is not applicable here. Rule 48(k) is an "absent without notice" provision that triggers forfeiture of seniority and employment when employees absent themselves for five consecutive working days. It is not intended to give employees the flexibility to show up for a new assignment on any day they choose, provided the start date is within five days of their official start time. In the instant case, the Claimant was required to be at work on both July 24, 2017 and July 25, 2017, and failed to do so.

Based upon all the above, the Board finds the Organization failed to meet its burden and convince the Board the Carrier violated the Agreement. As such, the claim is denied.

Although the Board may not have repeated every item of documentary evidence nor all the arguments presented in the record, we have considered all the relevant evidence and arguments presented in rendering this Award.

AWARD:

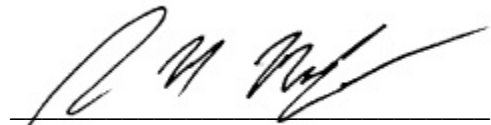
The claim is denied.



Paul Betts
Neutral Member
Dated: 08/01/2019



Chris Bogenreif
Carrier Member
Dated: 08/01/2019



Andrew Mulford
Labor Member
Dated: 08/01/2019