

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 13950
Docket No. 13827
NRAB-00002-070017
(07-2-17)**

The Second Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

**(International Association of Machinists and Aerospace
(Workers**

PARTIES TO DISPUTE: (

(Union Pacific Railroad Company

STATEMENT OF CLAIM:

“Dispute – Claim of Employee:

That the Union Pacific Railroad Company (hereinafter referred to as Carrier) violated Rule 32 of the Controlling Agreement between the International Association of Machinists, and the Missouri Pacific Railroad dated June 1, 1960, as subsequently revised and amended, when it harshly and unjustly placed a letter of discipline in the personal record file of Machinist Matthew Arnold (hereinafter referred to as claimant) on June 24, 2006, account his alleged violation of Carrier Rules which was done so without first holding a formal investigation to determine the facts.

Relief Requested:

That the Union Pacific Railroad be ordered to remove the discipline from the Claimant’s personal record and clear his service record of all references to the alleged incident.”

FINDINGS:

The Second 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 signed a manager's conference letter June 24, 2006. That letter referred to an incident that had occurred on March 21st, was discussed in conference on April 8th, and was entered as a replacement of an earlier letter in the Claimant's employment file.

Whatever dispute the earlier letter may have generated, the Organization protested August 18, 2006 that the Manager's conference letter was discipline; that it was "harassing in nature" and must be removed from the Claimant's employment records. The Carrier disagreed on all points and considered the letter appropriate and denied that it constituted discipline.

The Board has studied the various points raised by the parties to this dispute. We have paid careful attention to the Organization's arguments that the letter fails to comply with established and acceptable standards of counseling, rather than discipline. In pertinent part, the letter in dispute states:

"This letter will confirm our Manager's conference of April 8, 2006, which was held to discuss an alleged incident by you and another machinist on 3/21/2006. In this regard you have been advised you must ensure that you comply with all of the Union Pacific Railroad Rules, Policies, and Procedures in particular, but not limited to Rule 1.13, Reporting and Complying with Instructions, and 1.6 Conduct – 6 Quarrelsome and 7 Discourteous.

In this conference we discussed your alleged attempted intimidation of a fellow machinist when you allegedly made the comment "don't

get this started, once they see one employee doing it they will expect it all of the time". You allegedly made this comment when another machinist chose to work a task alone that does not require additional help.

You and I discussed that the union and company must ensure that the number one priority for both of us is that all employees work safely. After we ensure the safety, then we must ensure that our forces are productive. From all of the information I have developed, it appears that all of these goals were being met and there were no safety issues at this incident.

As a result of our discussion, I feel that you understand the topic that we discussed and the potential progressive consequences of violation of the Union Pacific Railroad's Rules, Policies, and Procedures. It is my expectation that you will comply with these Rules, Policies and Procedures at all times.

If you fail to meet the above expectations, your actions may result in the assessment of progressive discipline. I know you can meet these expectations, and I am here to help you succeed."

The Board finds no violation of the Agreement in the letter as written. We have reviewed the numerous Awards presented by the Organization to support its position that this letter is indistinguishable from disciplinary action when placed into the Claimant's personal record (Public Law Board 4732, Award No. 43, Public Law Board 5458, Award 13; Second Division Award Nos. 7588, 25007, 12513, 12755). This instance is unlike those Awards. The Organization's cited awards considered the letter discipline due to the fact that they were signed statements indicating that the Claimant admitted guilt for Rule violation or misconduct and/or were entered into the Carrier's policy of progressive discipline.

In this instant dispute, what the Claimant signed, *supra*, was firstly a statement that he had discussed all of the inclusive elements. Secondly, there was no evidence of record that this letter was part of any step in the Carrier's progressive

Form 1
Page 4

Award No. 13950
Docket No. 13827
NRAB-00002-070017
(07-2-17)

UPGRADE disciplinary policy. This letter discusses what occurred. It discusses what Rules were considered. It explains the needs for safety and productivity. There is no showing that this letter was "harassing" and most importantly, it did not accuse the Claimant of violating a Rule by his particular behavior. This is a record of an event (counseling) which is proper and is not discipline. By long established Awards, counseling of employees is appropriate and a record of such is acceptable under these circumstances (Second Division Nos. 12790, 12842, 13045, among others). The Claim is 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 Second Division**

Dated at Chicago, Illinois, this 15th day of July 2008.