Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 8062
SECOND DIVISION Docket No. 8044
2-C&NW-CM-'79

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

Parties to Dispute: (System Federation No. 76, Railway Employes' Department, A. F. of L. - C. I. O. (Carmen)
(Chicago and North Western Transportation Company

Dispute: Claim of Employes:

1. Carmen R. F. Gilson, T. Seiler, and T. D. Fry, were unjustly disciplined when letter concerning injuries incurred by these employes were made part of their personal files.

2. That the Chicago and North Western Transportation Company be ordered to remove these letters from the personal files of Carmen R. F. Gilson, T. Seiler, and T. D. Fry, as per the requirements of Rule 35.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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 waived right of appearance at hearing thereon.

This dispute comes to us as a result of Carrier supervision writing letters to three Carmen admonishing them for what Carrier considered to be a poor safety record. The Organization contends that the placement of letters in the Employees' personnel files constitutes discipline; as such, an investigation, as required by Rule 35, should have been held before hand. In view of this failure to hold the investigation, the Organization requests that the letters be expunged from the Claimants' files.

Very simply, this dispute turns on whether the letters were disciplinary in nature or served merely as warnings. If the latter was the case, they would have been letters written by a Carrier Supervisor in the normal course of business, with the intent of bringing to the Claimants' attention what Carrier considered to be a poor safety record.

In dealing with this issue in other cases, this Board has consistently maintained the position that letters of warning are not disciplinary in nature, and that their insertion in an Employee's file is not in violation of the investigation requirements of most agreements. We have maintained that properly used, letters of warning are an important and necessary device that can change an Employee's behavior and put him back on the track without the stigma of being disciplined and having this become a part of his personnel file and his work record.

On the other hand, it need not be pointed out at this late date that this Board has decided a multitude of cases against Carriers who have disciplined Employees without the benefit of a hearing when it is required by agreement or who have not conducted a hearing in a fair and impartial manner. We have consistently upheld the contract right of Employees to have the record of any false or disproven charges removed from their files. On the record before us, we see no element of discipline in the letters to the Claimants, nor do we see any indication of a threat of discipline. We view the letters as informative in nature, serving as a warning that the Claimants' safety records were not good and that they should give special attention to this fact and work to improve them.

Carrier in this case has clearly enunciated in its written policies and in its submission for this proceeding that it did not consider the challenged letters to be letters of discipline, but rather thought of them as letters of warning. We will hold Carrier to its commitment in any future cases we may decide involving this issue. We fully support Carrier's position that warning letters are not disciplinary and should not be viewed as such. A problem arises, however, in the way warning letters may be worded. Care must be taken not to indicate that the Employee is guilty of misconduct that would practically assure that he would be considered a second offender if brought up on charges for a similar offense in the future. We have decided in a recent case on this issue (Award No. 7588, Second Division) that letters containing accusations of guilt for a specific act should be considered disciplinary in nature and subject to investigation and a full and impartial hearing before being placed in an Employee's file.

We see no such accusations contained in the letters placed in the Claimants' files in this case. As to the Organization's argument that an Employee's total record will be used in assessing the severity of a penalty in a future disciplinary action, this Board has commented on this point on a number of occasions. We do not, nor will we in the future, allow the past record of an employee to have an impact on the decision about his guilt or innocence in a new case. We do, however, recognize that the severity of a penalty may, in some instances, be based on the Employee's past record. If Claimants in this case are ever brought up on charges for negligence in a safety issue, there is no question that it is legitimate for Carrier to submit their record of accidents. The record in such situations speaks for itself. Whether this record can be attributed to carelessness or negligence would be arguable and subject to proof, as would any other accusations made against an Employee.

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 29th day of August, 1979.