

The Second Division consisted of the regular members and in addition Referee Edward L. Suntrup when award was rendered.

Parties to Dispute: (International Brotherhood of Electrical Workers
(Southern Pacific Transportation Company (Pacific Lines)

Dispute: Claim of Employees:

1. That under the current Agreement, Mechanical Department Electrician N. P. Kalfountzos was unjustly treated when a memorandum dated November 8, 1979, stating he had been counseled for violating Rule 802 of the General Rules and Regulations of the Southern Pacific Transportation Company (Pacific Lines) was made a permanent part of his personal record. Said alleged violation occurring on or about November 8, 1979.
2. That accordingly, the Southern Pacific Transportation Company (Pacific Lines) be ordered to remove the memorandum dated November 8, 1979, from Electrician Kalfountzos' personal record or allow him due process under Rule 39 of the controlling Motive Power and Car Departments Agreement.

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.

Claimant, Mr. N. P. Kalfountzos, entered service of the Carrier on January 31, 1972. In November of 1979 Claimant was working as an electrician regularly assigned to the Motive Power and Car Department of the Sacramento Heavy Maintenance Plant, Sacramento, California. On November 8, 1979 Claimant was requested to report to the General Foreman's office where he was counseled for allegedly violating Rule 802. This Rule states the following.

"Indifference to duty, or to the performance of duty, will not be condoned.

Courteous deportment is required of all employes in their dealing with the public, their subordinates and each other. Boisterous, profane or vulgar language is forbidden.

Employees must not enter into altercations, scuffle, play practical jokes, engage in horseplay, or wrestle while on duty."

Also on November 8, 1979 a memo was signed by the Electrician Supervisor stating that Claimant had been counseled; the same memo was then signed by the General Foreman with the recommendation that it become a permanent part of Claimant's personnel file. For the record this memo is here quoted in toto:

"Sacramento - November 8th 1979

Mr. D. M. Fitzpatrick:

On November 8th 1979, Mr. Kalfounzos was counseled for violating Rule #802.

Present were A. D. McAdam, General Foreman S. Scroggins (Committeeman) and M. D. Wasina, Supervisor.

s/M. D. Wasina
Electrician Supervisor

ATTENTION: C. A. Priddy

I recommend that a copy of this letter be made a permanent part of this man's Personal Record.

s/T. M. Deuerling
General Foreman"

It is the position of the Organization that the Claimant should have been either afforded the protection of a fair hearing under Rule 39 (Discipline-Suspension-Dismissal) of the controlling Agreement or that the memo should be removed from the Claimant's file since its presence in the file can be construed as a type of discipline imposed by the Carrier.

The question of whether letters of warning, when they become part of the permanent record of an employee, are disciplinary in nature or not, cannot be resolved only as a matter of principle. This is why this Board has ruled differently on this issue in the past (Second Division 7588; 8062; 8531 inter alia.) This question can only be resolved by an examination of the facts related to each case. More specifically, a ruling by this Board must hinge on the substance of the specific letter of warning and the circumstances responsible for the letter in the first place.

The record shows that Claimant requested of his supervisor on November 8, 1979 that a train line be tested to determine if he had made a mistake or not on the previous day when he lugged a train line on a locomotive. The Board has no way of knowing if, in fact, a mistake was made: no specific evidence is presented to permit a conclusion of whether Claimant did, or did not violate Rule 802 and/or what provision of Rule 802 he may have violated. On the contrary

however, Carrier's memo of November 8, 1979 unequivocally states that Claimant was counseled "for violating Rule # 802". By implication such language can only lead to the conclusion that Claimant is guilty of violating this Rule in whole or in part.

It may well be that Carrier feels, as it states, that it did not wish to pursue this as a disciplinary matter to be covered under Rule 39: an unproven (at least to this Board) accusation of guilt, however, succinctly stated and placed in Claimant's file, provides the Carrier with the commodity of sanction without the effort of a hearing. Those who see this memo in its present form on Claimant's record in the future, as the Organization correctly states, "could not possibly evaluate the facts that prompted the memo" although they may be tempted to presume that Claimant was, in fact, in violation of Rule 802 as the memo states. If they would so conclude, the memo would then certainly have served as a type of discipline. This Board directs that the memo be removed from the Claimant's file.

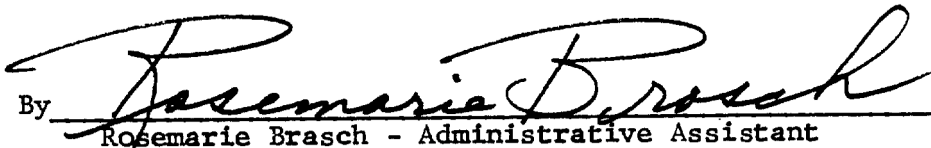
A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 2nd day of March, 1983.