

The Second Division consisted of the regular members and in addition Referee David P. Twomey when award was rendered.

Parties to Dispute: { International Brotherhood of Firemen and Oilers
{ Chicago and North Western Transportation Company

Dispute: Claim of Employees:

1. Under the current controlling Agreement, Mr. J. R. Stowe, Laborer, Green Bay, Wisconsin, was unjustly dealt with when a letter of reprimand was placed on his file; on May 19, 1981.
2. That accordingly, Chicago and NorthWestern Transportation Company be ordered to remove the letter of reprimand from his personal file.

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.

The Claimant, Mr. J. R. Stowe, is employed by the Carrier as a Laborer, at Green Bay, Wisconsin. On May 19, 1981, Mr. Stowe was handed the following letter, which letter was placed in his personal file:

"Mr. J. R. Stowe
Laborer
Green Bay Enginehouse
Green Bay, Wisconsin

During your tour of duty between the hours of 12:00 midnight and 8:00 A.M. on the morning of May 19, 1981, you were assigned to clean the underframe of unit 4130. This unit had the fuel tank removed for repair and was to have the entire underframe area cleaned before the fuel tank was installed.

When this unit was inspected by me at 8:10 A.M. on the morning of May 19, 1981, it was found to be only partially cleaned. Further investigation revealed the cleaning was begun on the afternoon shift prior to your coming on duty. The area which was cleaned by you could in no way constitute a day's work.

A work performance of this nature can not and will not be tolerated. I expect your job performance will improve or further action will be taken.

A copy of this letter will be placed in your personal file.

S/R. E. Nickel
Division Shop Supt.

The Organization contends that the placing of the letter in Mr. Stowe's personal file is a violation of Rule 21 of the current Agreement which assures employees who have been in service longer than sixty days that they will not be disciplined or dismissed without an investigation. The Organization sees the third paragraph of the letter as a threat and a disciplinary action. And, it states that no investigation was held. The Organization states that Mr. Stowe was not given an opportunity to present his side of the incident. It states that Mr. Stowe did not have the proper tools for the job, but did the best he could with a two inch scraper; and it notes that Mr. Stowe was the only Laborer on the shift that night and he was assigned other work to do other than cleaning the underframe.

The Carrier contends that a letter of reprimand to an employee does not in any way constitute discipline of the employee. The Carrier states that a letter of reprimand is strictly a written warning to the employee that the work he is performing is not up to the standard of the North Western and he should make an effort to improve his workmanship.

The Carrier states that letters of reprimand have been issued for many years on their property and that such a practice is supported by decisions of the Second and Third Divisions of the NRAB and SBA No. 235.

Second Division Award No. 8062 (Dennis), one of the awards cited by the Carrier in support of its policy, states in part:

"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..."

We are in full agreement with the rationale of Second Division Award No. 8062 that letters of warning as opposed to letters of discipline, are not in violation of Rule 21 of the current Agreement.

Award No. 2196 of Special Board of Adjustment No. 235 (Cluster) addressed the question of whether a past reprimand could be used in assessing discipline on an employee in a later case; and concluded in part that the Board has never "... referred to any past reprimand in any instance where the validity of the reprimand was called into question before it..."

In the instant case we find that the May 19, 1981 letter was a letter of warning dealing with the quality of work performance and was not a disciplinary letter. It should be noted that Mr. Stowe disagrees with the warning. And, in order to preserve his objection to the validity of the letter and to preserve the protections set forth in Award 2196 of SBA 235, Mr. Stowe has the absolute right to submit in writing for inclusion in his personal record his opinion that the Carrier did not provide the proper tools to do the job even though on prior occasions he requested such tools, and that he was the only Laborer on the shift that night and was assigned other work to do other than the cleaning of the underframe.

It should be noted that Second Division Award No. 8062 carefully avoided sanctioning the use of the term "letter of reprimand" and in its place used "letter of warning". The word "reprimand" may be perceived as having a disciplinary connotation to it; and the usage "letter of warning" appears to be more appropriate. The letter issued in this case makes no mention of the word "reprimand".

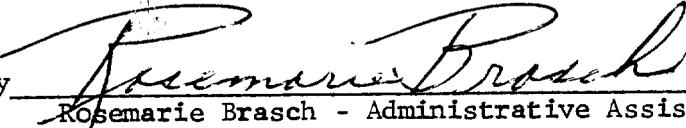
A W A R D

Claim denied.

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 15th day of June, 1983.