

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12514
Docket No. 12467
93-2-91-2-295

The Second Division consisted of the regular members and in addition Referee Nancy Connolly Fibish when award was rendered.

PARTIES TO DISPUTE: (International Association of Machinists
(and Aerospace Workers
(Southern Pacific Transportation Company

STATEMENT OF CLAIM:

1. That the Southern Pacific Transportation Company (hereinafter referred to as Carrier) violated Rule 34 of the Current Controlling Agreement between the International Association of Machinists and the Southern Pacific Transportation Company dated April 15, 1967, as subsequently revised and amended when it harshly and unjustly placed a letter of discipline dated February 5, 1991, on the personal record of Machinist G. M. Mendoza (hereinafter referred to as Claimant) account his alleged violation of Company Rules 801 and 802, without first holding a formal investigation to determine the facts.

2. That the Southern Pacific Transportation Company remove from Machinist G. M. Mendoza's personal record the February 5, 1991, letter of discipline and clear his service record of all references to the 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 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.

On January 26, 1991, Claimant, a Machinist at the Carrier's Houston, Texas locomotive maintenance plant, was called into a meeting by the General Foreman about certain defects he had overlooked while making an inspection of units SP 7793 and SP 4813 and to review Carrier's Rules 801 and 802 for its Mechanical Department employees. The Claimant's Representative was present during the meeting, during which the Claimant reportedly explained the oversights in his inspection as due to the inadequate lighting in the pits at night and to his not being properly informed by supervisors.

The Carrier subsequently summarized the above meeting in a letter dated February 5, 1991, which was signed by the Claimant and initialed by the Plant Manager, and placed in the Claimant's personal file. Following the Organization's February 17, 1991, protest of the Carrier's placement of letter on the Claimant's personal record, the matter was appealed on the property up to and including the Carrier's highest designated officer, and was finally docketed before the Board for final adjudication.

The Carrier's February 5, 1991, letter also cited portions of Rules 801 and 802 as follows:

"Rule 802 (that part reading): Indifference to duty, or the performance of duty will not be condoned.

Rule 801 (that part reading): Employees will not be retained in service who conduct themselves in a manner which would subject the railroad to criticism and any act of willful disregard or negligence affecting the interests of the company is sufficient cause for dismissal."

It concluded:

"This letter is being written to you, on an educational basis, to confirm your understanding of Rule 801, 802 and to express our concern regarding your work performance. A copy of this letter is being placed on your personal record.

You were informed that employees who may be proven to be in violation of Rules 801, 802 through investigative procedures (per Rule 34 or 24 of the controlling agreements), are subject to discipline which may result in permanent dismissal."

The Organization protests the placement of the above letter in the Claimant's personal file on the basis that the Carrier had administered discipline without benefit of an Investigation and alleges that the Carrier is therefore in violation of Rule 34 of the Agreement. It characterizes the content and tone of the letter as accusatory and disciplinary in nature. It further alleges that the placement of the letter in the Claimant's personal file assures that the Claimant would be treated as a "second offender" under a progressive discipline system and constitutes prima facie evidence that this information will be used against the Claimant in the future. It asks that the Carrier be directed to remove the letter from the Claimant's file.

The Carrier characterizes its February 5, 1991 letter as educational and defines the crux of this dispute as whether or not an educational letter reviewing a Rule in connection with an employee's failure to perform adequately is, per se, disciplinary action. It asserts that the Organization has failed to show that there was any assessment of guilt or disciplinary action taken against the Claimant by the Carrier and therefore has not proven that the Carrier's letter is disciplinary in nature.

The Board has examined the entire record, particularly the Awards cited by both parties in support of their positions. In Second Division Award 9412, involving a signed memo placed in the Claimant's personnel file that stated that the Claimant had been counseled for violating Rule 802, the Board directed the memo be removed from the file. In Second Division Award 7588, the Board was persuaded that a letter put in the Claimant's personnel record that recorded a meeting with the Claimant at which his failure to comply with a foreman's instructions was discussed, and that warned him that insubordination would result in disciplinary action, "amounted to an imposition of discipline without affording the employee the contractual rights he is guaranteed by Rule 34."

As in Second Division Award 12513, the Board finds that the placement of the letter at issue in this case in the Claimant's personal file is tantamount to taking disciplinary action. The letter summarized a meeting at which performance deficiencies were discussed and Rules 801 and 802 were reviewed. The letter itself cited portions of Rules 801 and 802 and noted that the Claimant had been informed that violations of those Rules could result in discipline, including permanent dismissal. In the words of the Board in Award 7588, "[n]ot only is the letter itself disciplinary in nature, but its placement in Claimant's file practically assures that he would be treated as a 'second offender' under a progressive discipline system should [the] Carrier, in the future, bring him up on charges, find him guilty and decide to impose discipline under Rule 34." The Board accordingly, sustains the claim.

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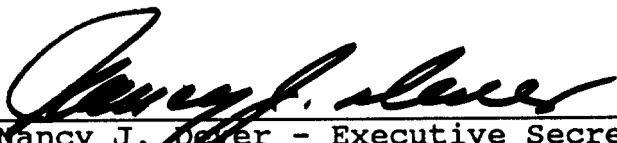
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A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 17th day of February 1993.