

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISIONAward No. 12790  
Docket No. 12579  
94-2-92-2-131

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

PARTIES TO DISPUTE: (International Association of Machinists  
( and Aerospace Workers  
(  
(Union Pacific Railroad Company

STATEMENT OF CLAIM:

"That the Missouri Pacific-Union Pacific Railroad Company violated Rule 32 of the Current Controlling Agreement between the International Association of Machinists and Aerospace Workers and the Missouri Pacific-Union Pacific Railroad Company dated June 1, 1960, when it harshly and unjustly placed a letter of discipline dated November 8, 1991, on the personal record of Machinist R.H. Schober.

That the Missouri Pacific-Union Pacific Railroad Company remove from the personal record of Machinist R.H. Schober the November 8, 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 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 waived right of appearance at hearing thereon.

Claimant is employed by Carrier at its North Little Rock Jenks Facility in North Little Rock, Arkansas. On November 7, 1991, Claimant and his Manager met to discuss Claimant's safety record and to engage in training concerning his working safely. As a result of the November 7, 1991, session, the Manager issued a letter to Claimant recording what took place at the session. Copies of the letter were placed in Claimant's personal file, as well as distributed to the Local Chairman and Management personnel. The letter reads as follows:

"NOVEMBER 8, 1991

MR. R.H. SCHOBER  
4503 WEST DR.  
NORTH LITTLE ROCK, AR 72118

DEAR MR. R.H. SCHOBER,

ON NOVEMBER 7, 1991, YOU ATTENDED A PERSONAL SAFETY CONFERENCE AT JENKS SHOP.

AS YOU WILL RECALL, WE DISCUSSED YOUR RECENT INCIDENT AND ALL THE CIRCUMSTANCES INVOLVED. THE PURPOSE OF THE CONFERENCE WAS TO MAKE YOU AWARE OF YOUR PERSONAL INJURY EXPERIENCE AND TO PROVIDE TRAINING. DURING THE CONFERENCE IT WAS AGREED UPON, THAT WE WOULD REVIEW SEVERAL VIDEO TAPES FOR YOUR TRAINING REQUIREMENTS PER THIS CONFERENCE.

DURING THIS TRAINING WE DISCUSSED YOUR COMMITMENT TO FOLLOWING SAFE WORK PROCEDURES, AND WATCHED THE FOLLOWING TRAINING VIDEOTAPES; "THE SAFETY SECRET", "HAND TOOL SAFETY", AND "THE HAND TRAP TEST". WE HOPE THIS TRAINING SESSION DEMONSTRATES TO YOU HOW SINCERE WE ARE ABOUT PROVIDING A SAFE WORK PLACE AND BECOMING A WORLD CLASS SHOP, AND I SINCERELY HOPE THAT THIS DAY WILL HELP IN YOUR EFFORTS IN BECOMING A SAFE PRODUCTIVE EMPLOYEE.

YOUR PARTICIPATION IN THE SAFETY TRAINING SESSION IS APPRECIATED, AND THE COMPANY ONCE AGAIN SOLICITS YOUR COMMITMENT TO WORK SAFELY. IF DESIRED, ADDITIONAL SAFETY TRAINING COVERING ANY FACET OF YOUR DUTIES WILL BE AFFORDED YOU UPON REQUEST.

S.J. SLATTERY

CC: H. SYERS--MANAGER OF SAFETY SERVICES  
D. HALL--LOCAL CHAIRMAN  
PERSONAL FILE--R. SCHOBER  
M. JOHNSON"

As a result of this letter being placed in Claimant's file, a claim was filed alleging that the letter constituted discipline. Consequently, it was a violation of Rule 32 of the current controlling Agreement.

Rule 32 states that an employe who is disciplined must first be afforded a fair and impartial hearing. The Organization reasoned that since the letter constituted discipline and no hearing was held, Carrier violated the Agreement. The letter and any reference to it should be expunged from all records of Carrier, as well as from Claimant's file.

Carrier takes the position that neither the safety conference on November 7, 1991, nor the letter in Claimant's file memorializing the conference constitutes any form of discipline. The safety conference was meant to be instructive, nonthreatening, and an expression of the importance of working safely. The letter memorializing this conference should not be considered a first offense in the progressive discipline ladder, but rather a record that indicates that Carrier had fulfilled its obligation to inform the employe about the advantage of working safely and instructing him on certain methods to be used to do so.

This Board has reviewed this identical issue with these same parties in the past. (See, for example, Second Division Award 12571.) In these instances, Carrier's position was upheld. Carrier has the right, if not the obligation, to instruct and counsel employes on safety matters. To do so and to place a memorandum in the record explaining what took place in the counselling session is appropriate. The reasons for counselling employes about safety matters should be obvious to all parties in the railroad industry. This is especially true when one considers the impact on a Carrier when, in an FELA case, it can be demonstrated that Carrier has neglected its obligation in regard to safety training and to maintaining a safe working environment.

The issue of whether a counselling memorandum constitutes a first step in the discipline ladder has been the subject of numerous arbitrations in the railroad industry, as well as in many other jurisdictions. The reasoned decisions on this point conclude that placing a memorandum of record in an employe's file does not constitute discipline. It should not be viewed as a first offense by Labor, Management, or a Neutral who reviews claims arising from this act in the future.

The parties to this dispute should understand that the letter at issue here can only be used to indicate that Claimant was given instruction. It is not discipline and cannot be viewed as such.

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 9th day of December 1994.