

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12854
Docket No. 12767
95-2-93-2-124

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

PARTIES TO DISPUTE: (The International Association Machinists &
(Aerospace Workers, AFL - CIO
(
(The Missouri Pacific Railroad Company

STATEMENT OF CLAIM: "The statement of claim as set forth by IAM
is as follows:

That the Missouri Pacific Railroad Company violated Rule 32 of the Current Controlling Agreement between the International Association of Machinists and the Missouri Pacific Railroad Company dated June 1, 1960, as subsequently revised and amended when it harshly and unjustly placed a letter of discipline dated August 31, 1992 on the personal record of Machinist D. A. Tackett (hereinafter referred to as Claimant) account his alleged misappropriation of railroad property, without first holding a formal investigation to determine the facts.

That the Missouri Pacific Railroad Company remove from Machinist D. A. Tackett's personal record the August 31, 1992, 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.

The Organization filed this Claim alleging Carrier violation of Rule 32 of the Agreement. Specifically, the Organization argues on property that a letter dated August 31, 1992, and entered into the Claimant's permanent record, amounts to discipline. The Organization maintains that the Claimant is protected from discipline by Rule 32, unless provided with his Agreement rights to a fair and impartial Investigation. Absent Investigation, the letter inserted into the Claimant's personal record is violative of the Agreement.

The Carrier denies that the letter is anything other than the report of a conference between the Manager and the Claimant. It notes that the letter states only performance expectations. Contrary to the Organization's characterization of the letter as containing "accusatory tones" which could "indisputably be construed as discipline," the Carrier denies that the letter is anything but a documented conference.

In reaching its decision, this Board has carefully reviewed the instant letter in light of the prior Awards raised by both parties to this dispute. The Organization has directed our attention to Awards which have removed such letters for violating Rules and constituting discipline (Second Division Awards 7588, 9412, 12513, 12514). The Carrier has emphasized those Awards holding that letters of warning or those general enough to constitute nonaccusatory conference letters do not violate Rules as herein alleged (Second Division Awards 9522, 12448).

This Board has reviewed the disputed letter. We have studied its language to determine if it makes a conclusionary finding that the Claimant violated a Rule. We have reviewed its contents to assess whether it is general or specific, discussing the employees performance or containing language implying a Rule violation. The letter is addressed to the Claimant and states:

"Dear Mr. Tackett:

This will confirm my discussion with you on 8/26, 1992 at 4:00 p.m., at the Ramp Phase II, as concerns your employee responsibility to care of property. In this regard you were advised that you must ensure that you familiarize yourself with Rule 609 in the Safety Radio and General Rules Book which reads in part "Employees must not appropriate railroad property for their personal use or for the unauthorized use of others."

Also, I advised you of your responsibility to adhere to Carrier policies and rules of Form 7908, Safety, Radio, and General Rules for all employees, and you should pay particular attention to Rule 609, which covers your responsibility in the subject referenced above.

Any questions concerning this letter of Counsel should be referred to Carrier supervision." (Underlined are blank areas filled in by the Carrier on a form letter)

In view of the letter as written, this Board finds no violation of the Agreement Rule 32. Unlike the Awards cited by the Organization, supra, there is no statement alleging that the Claimant violated any specified Rule of the Agreement. There is no unequivocal statement that the Carrier has found the Claimant to have committed a violation. The Board does not find the letter to be either accusatory, or conclusionary as failing to properly fulfill responsibilities. The Board concludes that the letter is properly a conference letter and does not rise to the level of constituting disciplinary action. Its placement with the Claimant's personnel file does not violate Rule 32. The Claim is denied.

AWARD

Claim denied.

O R D E R

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 24th day of February 1995.