

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13230
Docket No. 13109
98-2-96-2-11

The Second Division consisted of the regular members and in addition Referee Robert Richter when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers
(CSX Transportation, Inc. (former Chesapeake and
(Ohio Railway Company)

STATEMENT OF CLAIM:

- “1. That the former C&O Railroad Company, now CSX Transportation, Inc., in violation of Rule 37 of the controlling agreement, issued discipline by written reprimand to Electrician M.D. Royse by letter dated August 5, 1994, without benefit of a fair hearing, and accordingly;
2. That CSX Transportation, Inc., expunge Electrician M.D. Royse’s record of any and all mention of this matter.”

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 were given due notice of hearing thereon.

On August 5, 1994 Claimant was given a letter from the Carrier which reads:

“SUBJECT: Audit Non Compliance

On July 28, 1994, the Manager Quality Control made an audit of the Test Track area to confirm compliance to SMR X-6800-10 Rev. A.

Four (4) items on the audit form were found not in compliance of which two (2) of these were your direct responsibility.

These are:

1. You continued to move locomotives with full knowledge that you were not Hostler qualified.
2. Units were observed during the audit that were not set up properly for track test.

As an electrician lead man at Load Test, you are expected to take immediate steps to correct these deficiencies. A copy of this will be placed on your personal file.”

The Organization filed this claim on the basis that the Claimant was disciplined without being afforded a Hearing as called for in Rule 37.

The Carrier denied the claim on the basis that the Claimant was not disciplined, but this was a letter of counseling about the Claimant’s work performance.

Numerous Boards have dealt with this issue, and the great preponderance have found that letters of counseling are simply a method for alerting an employee to work performance that the Carrier deems unacceptable. Such letters do not constitute discipline, nor may they be used as a “first step” in a progressive discipline system. The letter in this case clearly spells out the behavior to which the Carrier took exception. The letter does not constitute discipline.

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 30th day of March 1998.