

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13259

Docket No. 13050

98-2-95-2-73

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

**(Brotherhood Railway Carmen, Division of
(Transportation Communications International Union**
PARTIES TO DISPUTE: (
(Southern Pacific Transportation Company
((Western Lines)

STATEMENT OF CLAIM:

“Claim of the Committee of the Union that:

- 1. That in violation of the controlling Agreement, Rule 39, Carman G.C. Bennett was unjustly suspended from the service of the Southern Pacific Transportation Company (Western Lines) for a period of thirty days effective Wednesday June 1, 1994 through Friday July 1, 1994, as a result of investigation held April 14, 1994, Tucson, Arizona.**
- 2. That the investigation held April 14, 1994, was not a fair and impartial investigation as required by Rule 39 of the Controlling Agreement, and that the discipline assessed was unjust and unwarranted and should be set aside.**
- 3. That accordingly, the Southern Pacific Transportation Company, (Western Lines) be ordered to compensate Carman G.C. Bennett for any and all wages, including overtime, lost by him during the thirty (30) day suspension, and that any seniority, vacation, railroad retirement, health and welfare, medical and dental insurance, and any other rights or benefits of which he has been deprived, in addition to removing the entry of investigation and discipline from his personal record.”**

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.

Following an investigative Hearing on April 14, 1994, the Claimant was assessed a disciplinary suspension of 30 days, to be effective from June 1, 1994 to July 1, 1994.

The discipline was subject to the claims procedure. When no on-property adjustment was reached, the Organization referred the matter to the Board on June 23, 1995. On July 14, 1995, apparently as a result of a meeting between a Carrier representative and the General Chairman, the Carrier agreed to withdraw the 30-day suspension and delete reference to it from the Claimant's record; in place thereof, the Carrier sent a letter to the Claimant. In such letter, the Carrier "directs [the Claimant's] attention" to various Safety and General Rules, indicating that a copy of the "memorandum" would be placed in the Claimant's file to document his "enhanced awareness" of the Rules. No Rule violation was cited.

The Claimant was asked to sign and "agree" to the letter, but he failed to do so. At this point, the Carrier advised the General Chairman that the settlement agreement was "rescinded."

According to the Carrier's Submission, however, no record of any disciplinary action was placed in the Claimant's record. The Carrier further states that, during the proposed 30-day disciplinary period, the Claimant lost no pay, since he was on certified disability leave. There is no contradiction to these assertions.

The "settlement" having been rejected, the Board recognizes the right of the Organization and the Claimant to proceed to the Board for its disposition of the matter. Given the facts outlined above, however, the Board finds the question of the 30-day disciplinary action to be moot and requires no resolution. There remains the question of the propriety of the letter/memorandum placed in the Claimant's record. Absent any allegation of Rule violation or threat of further discipline, the placing of such written advice in an employee's record is within the Carrier's prerogative and not in Rule violation. Such has been held in many previous Awards.

This Award will dismiss the claim as to the disciplinary action and deny the claim as to the letter placed in the Claimant's file.

AWARD

Claim dismissed and 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 18th day of May 1998.