

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 13403
Docket No. 13285
99-2-97-2-56**

The Second Division consisted of the regular members and in addition Referee Martin H. Malin when award was rendered.

**(Brotherhood Railway Carmen, Division of
(Transportation Communications International Union
PARTIES TO DISPUTE: (
(Springfield Terminal Railway Company**

STATEMENT OF CLAIM:

“Claim of the Committee of the Union that:

- 1. That the Springfield Terminal Railway Company violated the terms of our current agreement, in particular Rule 13 when they arbitrarily disciplined Fred Curtis by placing correspondence into his file, citing him for a safety rule violation without providing him a fair and impartial hearing as provided for in our agreement.**
- 2. That, accordingly, the Springfield Terminal Railway Company be ordered to expunge the charges and discipline from the record and file of Carman Fred Curtis.”**

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 September 26, 1996, a Carrier Supervisor allegedly observed Claimant hanging out the window of a locomotive while stenciling reporting marks on the side of the locomotive. As a result, the Supervisor issued Claimant a Safety Training Observation Procedure (STOP) form. No Hearing was held regarding the alleged incident.

The parties disagree over whether the STOP form issued to Claimant constituted discipline. If it did, then the claim must be sustained because of the absence of an Investigation. If it did not, then Carrier acted within its rights.

Numerous Awards have considered the line between non-disciplinary counseling and discipline. A detailed review of the precedent appears in Third Division Award 31489. The Board observed that claims generally are sustained when "supposedly counseling letters accuse the claimants and find them guilty of specific Rules violations," and that claims generally are denied when "letters . . . merely caution employees concerning their future conduct . . ., even when placed in their files and even if they indicate that future misconduct may result in disciplinary action. . . ."

The STOP form in the instant case identified the Supervisor and the employee; gave the date, time and location of the observation; and provided for the employee's signature. Below this information was listed:

"Safety Rule No. GR-D

Result: F

Comments: PAINTING REPORTING MARKS ON ENG. 355 BY HANGING OUT CAB WINDOW."

A key at the bottom of the form indicated that "F" stood for, "FAILED/DISCUSSED."

It is apparent that the STOP form documents a specific alleged Rule violation by Claimant, i.e., Safety Rule GR-D. It accuses Claimant of violating the Rule and finds him guilty. As such, it goes beyond mere counseling concerning safe work practices and constitutes discipline.

Carrier contends that it must be able to apprise employees immediately of their safe or unsafe work practices for its safety program to succeed. The Board sees nothing improper with Carrier doing so. However, when, in the process, Carrier accuses an employee expressly of violating specific Rules, it may not find him guilty of such Rules violations without first affording him a fair Hearing.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division**

Dated at Chicago, Illinois, this 8th day of June 1999.