

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13501
Docket No. 13335
00-2-98-2-21

The Second Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

**(Brotherhood Railway Carmen Division
(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 placed a memo concerning absenteeism into the file and record of Carman David M. McCaslin.
- (2) That, accordingly, the Springfield Terminal Railway Company be ordered to remove this memorandum, dated December 30, 1996, from the service folder of Carman David M. McCaslin.”

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.

The instant claim protests the placement of a memo dated December 30, 1996 concerning a meeting held with the Claimant regarding absenteeism into his personal file on two bases. First, the Organization contends that the memo itself constitutes discipline which was issued without a fair and impartial hearing in violation of Rule 13.1. Second, the Organization asserts that the Claimant had already signed a Letter of Responsibility and served a 30 day suspension resulting from the same absenteeism matters contained in the memo, and was therefore being subject to double discipline for the same charges in violation of Rule 13.4.

The Carrier contends that the memo in issue is non-disciplinary in nature and merely confirms a meeting held with the Claimant, and thereby does not fall under the provisions of Rule 13, citing Second Division Awards, 8062, 8531, 12923, 12924; Third Division Awards 27805, 27807, 29583, 31489; First Division Award 24358.

A careful review of the record, with specific emphasis on the wording of the three page December 30, 1996 memo, convinces the Board that the memo is not disciplinary in nature, and sets forth what was discussed by all participants at the meeting held on December 12, 1996. The letter notes the parties' review of two prior memos concerning the Claimant's absenteeism dating back from his return from furlough in 1992, and notes the Carrier's concern that if his trend of absenteeism continues uncorrected, it would eventually lead to his dismissal. The memo sets forth the Claimant's statement that the personal problems causing his absenteeism were behind him, and the Organization's objection to use of memos of this sort in the future. The letter does not accuse the Claimant of any specific rule violations, but does caution him that if his attendance does not improve, he will be subject to more severe discipline in the future. The Board has held that such documentation is not disciplinary in nature and does not require a formal hearing under the provisions of Rule 13.1. See Second Division Awards 8062, 12924; Third Division Award 27805.

Having found that the Claimant was not doubly disciplined for the same infraction, we feel obliged to note that the Claimant signed a Letter of Responsibility on October 4, 1996 accepting a 30 day suspension for excessive absenteeism, he served the suspension between November 4 and December 3, 1996, and returned to work on December 4, 1996. The Claimant missed no time between his return to work and the initiation of the December 12, 1996 meeting which led to the December 30, 1996 memo in issue. The Carrier's assertion that the memo was for the purpose of educating the Claimant away from unacceptable behavior and was an attempt to make known to him

that the Carrier is concerned, is suspicious when considered in line with the fact that the Claimant had just served a 30 day suspension for excessive absenteeism and had missed no time during the seven day period since his return to service when he was called into this meeting. While the Carrier is well within its rights to counsel an employee concerning unacceptable behavior and to make known the expected standard of conduct, as well as to record and file documentation of such counseling session, the only valid purpose for which such memo may be used is to show that the employee had knowledge of the Carrier's concerns and expectations. It would be reasonable to assume that the Claimant's recent suspension would have accomplished this goal.

That being said, we find that the Carrier was within its rights to place the disputed memo in the Claimant's file, although its future value is questionable.

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 17th day of April, 2000.