

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13538

Docket No. 13380

00-2-98-2-68

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

(Brotherhood of 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 suspended Carman James Besemer from service as a result of an investigation held on September 3, 1997.
2. That, accordingly, the Springfield Terminal Railway company be ordered to return Carman James Besemer to service with compensation in the amount of eight (8) hours pay for each work day he was withheld from service, commencing October 15, 1997 through and including October 16, 1997.”

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 Claimant had been serving as a Carman/Crane Operator at the Carrier's Car Repair Facility, Lowell, Massachusetts, at the time of the incident giving rise to this dispute. His Claim challenges the Carrier's issuance of "STOP" notices pursuant to its Safety Training & Observation Program in addition to a two-day suspension for his role in failing to secure his crane at the site of a derailment.

According to the Carrier, on September 16, 1997 the Claimant was requested to drive a mobile crane to Salem, Massachusetts, as part of a team assigned to re-rail two freight cars under the direction of the Carrier's Manager of Car Maintenance, James Olson. During the re-railing operation, Olson noticed that the Claimant's crane was moving while the winch was in use and asked him to take it out of gear and put it into neutral. Upon entering the cab, the Claimant found the machine to be in gear as Olson had indicated. He then shifted it into neutral gear and resumed work on the winching operation. Later that day, Olson issued him two STOP memos reflecting noncompliance with two Safety Rules requiring the operation of motor vehicles in a safe manner. Following an Investigation and Hearing conducted on September 25, 1997 on the same charges, the Claimant was found responsible for allowing his crane to move forward during winching and suspended from service for two working days.

On the merits, the Organization contends that the Carrier has failed to establish negligence on the Claimant's part. The Carrier's determination that the Claimant was responsible for leaving the crane in gear is sheer speculation. The Carrier's manner of handling the discipline is also procedurally irregular. The gist of the Organization's procedural argument during case handling on the property was that it in effect disciplined the Claimant twice for the same offense by first presenting him with STOP memos on September 16, inserting a copy into his file and then one day later charging him officially with the same Rule violations and utilizing the STOP documents at the subsequent Investigation as evidence of guilt. Additionally, the Carrier's refusal to allow questioning by more than one union representative deprived the Claimant of a fair Hearing.

The Board's review of the record reveals that the Carrier has adequately supported its findings of the Claimant's negligence. The Carrier's supervisor Olson was on the scene and credibly confirmed the Claimant's omission, testifying without objection that the crane was free of defects and that human intervention is required to

push a button and move the gear shifter before the crane can move into gear. The Claimant himself took no exception to the initial issuance of the STOP memos. Accordingly, while there appears to be no question of the Claimant's overall level of skill, competence or training, and no question but that he was specifically aware on the day in question of the need to set his handbrake and put the crane into neutral before beginning the winching operation, the totality of the evidence - including what can fairly be summarized as his own admissions - conclusively establishes that he forgot to perform the latter task. The testimony of the Carrier representatives indicated that the winch is designed to be operated in neutral, and that not taking the crane out of gear is an omission that may pose a serious safety problem. In this instance, when the engine was throttled to run the winch, the rpm levels rose to a point where the engine overrode the set brakes, causing the crane to drive forward with the brakes on.

The question of whether the Claimant has been subjected to a kind of serial prosecution here by reason of STOP memos followed by a disciplinary suspension is a closer one. The weight of authority in the Second Division appears clear: mere cautionary letters are not discipline as such, and placement of such letters in employee files reviewed at later disciplinary hearings is appropriate as in the nature of salutary documentation of discussions and warnings. On the other hand, when such written documents purport to find the employee guilty of specific Rules violations, a different outcome is likely, as such letters cross the line into the discipline zone.

The Carrier asserts that STOP's are training tools, not discipline, designed to simply put the employee on notice of a potentially unsafe work practice. The Board finds that the Carrier has the good cards on this issue - the two STOP memos in dispute have exactly the attributes of warnings. Characterizing them as discipline ignores the fact that by their terms they do not find the Claimant "guilty" of a Rule violation, or even constitute a rebuke. What they do is memorialize the crane incident, note the Safety Rules implicated and set in motion the Investigation process at which full discussion of the incident from which findings of "guilt" or "innocence" will be made. As such, they hardly constitute imposition of discipline without a fair Hearing. Nor does the record in this instance support the assertion that the STOP memos were improperly relied upon during the Claimant's Hearing in a manner that prejudiced the Hearing Officer or resulted in more severe discipline than may otherwise have resulted.

The judgment of the Carrier's Hearing Officer to restrict questioning to one Union official under the circumstances presented did not, in our judgment, result in prejudice to the Claimant or deprive him of his right to a fair Hearing.

For the reasons stated above, the claim respectfully must be denied.

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 25th day of September, 2000.