

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13639

Docket No. 13552

01-2-00-2-33

The Second Division consisted of the regular members and in addition Referee Ann S. Kenis when award was rendered.

(International Brotherhood of Electrical Workers
(System Council No. 16)

PARTIES TO DISPUTE: (

(Burlington Northern Santa Fe Railway Company

STATEMENT OF CLAIM:

- “1. That in violation of the current Agreement, Rule 35 in particular, supervisors at the Burlington Northern/Santa Fe Railroad owned Northtown Diesel Facility, Minneapolis, Minnesota, have been engaged in “covert observations” of Employees’ work performance and safety compliance monitoring.
2. That the Burlington Northern/Santa Fe Railroad Company is arbitrarily placing letters of rule violations, notations and other information on the personal records of selected employees of the Northtown Diesel Facility, Minneapolis, Minnesota.
3. That these letters of the rule violations, notations and other information are accusatory in nature and will be used for future consideration in the progressive discipline process.
4. That the Burlington Northern/Santa Fe Railroad Company be directed to remove said letters, notations and other information from the personal files of the employees at the Northtown Diesel Facility, Minneapolis, Minnesota, and further that this practice be discontinued.”

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 May 19, 1997, the Organization filed the instant claim on behalf of all bargaining unit employees working in the Mechanical Department at the Carrier's Northtown Diesel Shop in Minneapolis, Minnesota. The claim alleges that the Carrier violated Rule 35 of the Agreement, which requires that a fair and impartial Investigation be provided prior to assessing discipline. In particular, the claim asserts that the Carrier instructed its Supervisors to conduct "covert observations" of the work performance and Safety Rule compliance of its employees. In addition, the claim alleges that written notations of the Rule violations observed by supervision were then placed in the employees' personal records without benefit of due process or notice. Further, the claim alleges that the designed use for that information is improper in that it is made a part of the employees' performance records to be used for purposes of progressive discipline.

The Carrier denied the claim, contending that it has not instructed Supervisors to conduct covert observations of craft employees. The Carrier asserted that it requires employees to comply with all applicable Rules and has the right to monitor for Rules compliance. Furthermore, the Carrier noted that appropriate action, which could include an Investigation, would be taken in the event that an employee is observed violating a Rule. The Carrier stated that no discipline would be placed in the record of any employee unless a fair and impartial Investigation had taken place as provided in Rule 35 of the Agreement.

During the handling of this claim on the property, the Organization produced a list of "high risk" employees used by the Carrier to identify those employees who demonstrated a propensity for safety, injury or attendance problems. The Organization argues that this list is a means of targeting certain employees for harassment and intimidation. In addition, the Organization asserts that the Carrier's "Safety Action

Plan” is more than just an extension of the duties performed by supervision on a daily basis - the plan assures that certain employees are targeted for corrective action.

The Board has given very careful consideration to the record presented in this case. It is our conclusion that the claim must be denied, for several reasons.

First, it must be remembered that management is properly concerned with the work performance of employees and whether Rules, Regulations and Policies are being followed. Such matters are regularly noted by Supervisors and are an integral part of supervisory responsibilities. Employees work with the knowledge that supervision may be watching at any time. This is not to say that the right of management in this regard is completely unfettered. There may be some circumstances in which management goes beyond the proper limits of its right to observe where privacy or personal rights come into play. But those sorts of rights are not implicated here.

The Organization argues instead that these observations target specific employees who have been identified by the Carrier as “high risk” and lead to a notation of the observation being placed in the employees’ files for disciplinary use. That brings us to the second weakness in the Organization’s claim.

Nowhere in the handling of this claim on the property was there any probative evidence that supervisory observations have been used to build a record which led to discipline nor was there evidence that observations have been used as a tool to harass and intimidate employees. While the Board is cognizant of the fact that this is a “class grievance” in the sense that it is a claim on behalf of all unit employees working in the mechanical department at the Northtown Diesel Facility, there must be sufficient evidence from which it can be determined whether or not the claim has merit. As the Carrier correctly pointed out in its December 23, 1999 correspondence, “This grievance has been pending for over two years and the IBEW has not brought . . . even one instance in which any so called ‘covert’ action has resulted in the assessment of discipline without waiver or formal Investigation.” Mere assertions of improper discipline or harassment are insufficient to support the claim presented herein.

Finally, the Organization’s claim objects as a general matter to the use of “letters of rule violations, notations and other information on the personal records of selected employees of the Northtown Diesel Facility.” There are a number of cases, cited by the parties, which address the issue of whether a letter placed in an employee’s file is

disciplinary or non-disciplinary. Generally, it has been held that the Carrier has the right to counsel its employees and place letters regarding the counseling in their files so long as the letters do not accuse the employees of committing Rule violations or prohibited conduct and are not used by the Carrier as the first step of discipline. See, Second Division Award 13401, Third Division Awards 29709, 32937, 34219.

We are unable to make a determination in the instant case as to the nature of the letters or notations because not even one was submitted as part of the record. Generalized claims cannot substitute for particularized evidence in a matter such as this, where the content of the written document itself determines whether it is disciplinary or non-disciplinary in nature.

For all the foregoing reasons, the Board concludes that the Organization failed to prove that the Carrier violated Rule 35 of the controlling Agreement. The claim must therefore 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 6th day of August, 2001.