

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 13643
Docket No. 13519
01-2-99-2-125**

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

**(National Conference of Firemen and Oilers
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company (former Denver and
(Rio Grande Western Railroad Company)**

STATEMENT OF CLAIM:

- “1) That in violation of the current Agreement, Mr. S. Hilton, Laborer, Denver, Colorado, was unjustly dealt with when an entry of censure was placed on his personal record, following a hearing held on March 9, 1999.**
- 2) That accordingly, the Denver & Rio Grande Western Railroad Company (Union Pacific Railroad Company) be ordered to remove the entry of censure from his 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.

On December 30, 1998, the Carrier directed the Claimant to attend an Investigation on January 6, 1999, concerning the allegation that, on December 5, 1998, while on duty, he approached the Manager Operations Practices in a discourteous and confrontational

manner, in violation of Operating Rule 1.6. Following three postponements, the Hearing was held on March 9, 1999. On March 17, 1999, the Carrier informed the Claimant that he had been found guilty of the charge and had been assessed discipline at Level 1 on Carrier's UPGRADE policy, i.e., a letter of censure.

The Manager Operating Practices testified that, on the date in question, he went to the North Yard fuel track in connection with a locomotive that had been stalling. The Claimant approached him concerning alleged violations of a laborer's Agreement for driving. The Manager advised the Claimant that he had nothing to do with the Agreement and advised the Claimant to contact Labor Relations. The Claimant directed a comment to the Manager that someone should be arrested for violating the Agreement and then directed a comment to another employee, calling the Manager, "just a flunky road foreman."

The Manager's testimony established the Claimant's violation of Rule 1.6. At the Hearing, during cross-examination of the Manager, the Claimant's representative asserted that he had a written statement from the Claimant to the effect that a Foreman, rather than the Claimant, made the "flunky road foreman" comment. The Manager stood by his testimony that it was the Claimant who made the comment. The Claimant chose not to attend the Hearing and no written statement from the Claimant was ever produced or entered into the record. Accordingly, we conclude that the Carrier proved the charge by substantial evidence and that the claim 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 6th day of August, 2001.