

The Second Division consisted of the regular members and in addition Referee Jonathan Klein when award was rendered.

Parties to Dispute: (International Brotherhood of Electrical Workers  
(Southern Pacific Transportation Company (Western Lines)

Dispute: Claim of Employes:

1. That under the current Agreement, Mechanical Department Electrician S. M. Basinger was unjustly treated when he received a discipline letter in his personal record for alleged violation of portions of Rule 810 and Rule "B" of the General Rules and Regulations of the Southern Pacific Transportation Company (Western Lines). Said alleged violation occurring on or about February 5, 1982.

2. That accordingly, the Southern Pacific Transportation Company (Western Lines) be ordered to remove the discipline letter dated on or about February 5, 1982, from the Claimant's personal record, or that he be allowed due process of a formal hearing as provided for under Rule 39 of the controlling Mechanical Department Agreement.

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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 waived right of appearance at hearing thereon.

Claimant entered Carrier's service as an Electrician on November 6, 1974, and was employed at Carrier's Eugene Oregon, Locomotive Repair Plant. On February 5, 1982, the Claimant had a meeting with the Plant Manager concerning the location on the Carrier's property where Claimant parked his motorbike, and his alleged failure to be found at his work location when Carrier personnel sought to discuss the location of the motorbike with him. A meeting between the Claimant and the Plant Manager took place later that same day.

This Board is faced with a conflict between the parties as to the purpose for the meeting, and the memorandum which was ultimately placed in Claimant's personal file. After a brief factual recitation, the memorandum summarizes the conference between the Claimant and the Plant Manager as follows:

"I pointed out the fact to Mr. Basinger that his motor bike was not appropriately parked in complete defiance with the instruction that said, 'Bicycles Only,' and I read to him Rule B from the Southern Pacific Transportation Company Rules and Regulations:

'Employes must be conversant with and obey the rules and instructions. If in doubt as to their meaning, they must apply to proper authority for an explanation.'

Upon discussing this rule I asked Mr. Basinger if he had any questions about the rule, and he said, no, that he understood. I then read to him Rule 810:

'Employes must report for duty at the prescribed time and place, remain at their post of duty, and devote themselves exclusively to their duties during their tour of duty. They must not absent themselves from their employment without proper authority.'

I asked Mr. Basinger if he understood, to which he said, I do.

I informed Mr. Basinger that he, as well as all employes, must be guided by posted rules, as well as General Rules of the Southern Pacific Transportation Company.

/s/  
R. H. Sixby  
Plant Manager"

(Emphasis Supplied).

The Organization, on behalf of the Claimant, contends that the very placement of a memorandum in an Employee's file is improper and violates Rule 39's requirement of a fair hearing for discipline or dismissal. The Carrier insists that use of such a memorandum is consistent with management's prerogative to engage in corrective counseling of its employees. We concur with the Carrier's position that a letter of warning or counseling is not disciplinary in nature. This Board has stated in prior awards that the mere insertion of a letter of warning or counseling in an employee's file is not in violation of the investigation requirements of most agreements, including the agreement before us in the instant appeal. The Board stated in Award No. 8062 that "letters of warning are an important and necessary device that can change an Employee's behavior and put him back on the track without the stigma of being disciplined and having this become a part of his personal file and his work record." Accord, Second Division Awards Nos. 10676 and 7588. The issue, therefore, is whether this memorandum constitutes corrective counseling properly inserted in Claimant's personal file, or whether it amounts to discipline invoking the hearing requirement of Rule 39.

The Carrier in its argument to this Board bifurcated its analysis of the challenged memorandum. First, Carrier argued quite correctly that Claimant was merely counseled with respect to Rule 810. The memorandum clearly indicates that Claimant was simply read Rule 810 and asked by the Plant Manager whether he understood it. This is a proper and wholly acceptable example of employee counseling. Thus, Claimant was made aware of a Rule of conduct by the Plant Manager, and given the opportunity to discuss that Rule in the context of his own behavior on the property. Carrier's position with respect to Rule 810 is well-taken.

The Carrier admits as to that portion of the memorandum pertaining to Rule B that it is at least a warning to Claimant that his conduct must comply with the Carrier's Rules and instructions, and serves as evidence of Claimant's knowledge and understanding of Rule B. The Organization, however, accurately describes this portion of the memorandum as a charge of insubordination for failure to comply with instructions. Claimant was charged in the memorandum with acting "in complete defiance" with the Carrier's instructions pertaining to the location in which he parked his motor bike. Insubordination entails a refusal to submit to authority; to act in a disobedient fashion. Second Division Award No. 10048. The American Heritage Dictionary (1971) defines defiance as: "1. The disposition to defy or resist an opposing force or authority; resolute resistance. 2. Intentionally provocative behavior or attitude; a challenge."

A reasonable and objective reading of that portion of the personal record memorandum which pertains to Rule B compels this Board to find it to be essentially accusatory in nature, and a finding of fact that Claimant was guilty of culpable misconduct in failing to obey proper instructions. Compare, Second Division Awards Nos. 7588 and 10676. The fact that the memorandum subsequently states Claimant's knowledge or understanding of Rule B does not mitigate the finding of a Rule violation in the above-quoted language.

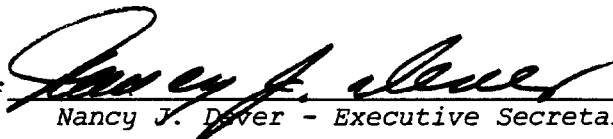
The Board finds it is without authority to rewrite or redraft the personal record memorandum so as to comply with these findings, and therefore, the Claim to remove the memorandum is hereby sustained.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 8th day of January 1986.