

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

(Brotherhood Railway Carmen of the United States
(and Canada
Parties to Dispute: (
(Duluth, Missabe and Iron Range Railway Company

Dispute: Claim of Employees:

1. That the Duluth, Missabe and Iron Range Railway Company violated the terms of our current agreement, particularly Rule 28(a), when they placed letters of reprimand on Carmen D. R. Koldena's (sic) and V. J. Courture's (sic) personal records.

2. That the Duluth, Missabe and Iron Range Railway Company be ordered to remove the letters of reprimand from the personal records of Carmen D. R. Kolenda and V. J. Couture.

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 employees 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.

The Carrier's Manager, Proctor Car Shop, issued and placed in Claimants' records similar letters dated May 24, 1985 concerning Claimants' alleged absence from assigned work areas. The letters reviewed the facts surrounding the incidents and then stated:

"This is almost an hour of time during which you were paid but performed no work. That is unacceptable!

* * *

I expect that this letter, and my talk with you, will be the only time that I am required to reprimand you for poor work habits."

The Organization argues that by placing the letters in the Claimants' records, the Carrier violated Rule 28(a) of the Agreement in that discipline was issued without an investigation. The Carrier denies that the letters were discipline, asserting that the letters were counseling in nature.


Our careful review of the letters satisfies us that the Organization's argument is well taken. In each case we must determine whether the personnel action at issue is in the nature of counseling (which does not require an investigation) or in the nature of discipline (which does require an investigation). Second Division Award 7588. We are convinced that the letters purport to make findings of fact regarding Claimants' conduct, contain accusations of guilt and impose a penalty of a written reprimand for that conduct. The letters cross the line of counseling and amount to discipline requiring an impartial investigation under Rule 28(a). Second Division Awards 8531; 8062. Since no investigation was conducted, we shall require that the letters be removed from Claimants' records.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 22nd day of April 1987.