Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 12307
SECOND DIVISION Docket No. 12259
92-2-91-2-51

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

PARTIES TO DISPUTE: (Patrick W. Casale
(
(CSX Transportation, Inc. (former Seaboard Coast Line Railroad Company)

STATEMENT OF CLAIM:

1. That at Jacksonville, FL, on February 13, 1989, CSX-T violated the Controlling Agreement when Supervisor Communications Mr. G. P. Elam instructed Communications Maintainer Mr. P. W. Casale, ID #197590, to report to Carrier's Office and placed two (2) letters on personal record which established a discipline hearing and Mr. Casale was denied his duly authorized representative.

2. That Communications Maintainer Mr. P. W. Casale and any other Communications employee represented by the International Brotherhood of Electrical Workers (SCL) be allowed during a discipline hearing to have representation by his duly authorized representative as the above was in violation of said rules on February 13, 1989.

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.

The pivotal issue in this case is whether a letter of warning constitutes discipline as that term is contemplated under Rule 35 of the Agreement or whether a letter of warning represents a cautionary notice that a particular behavior is unacceptable. In considering this question within the context of the decisional law of the Board, it is found that a Letter of Warning is not discipline within the parameters of Article 35, but a cautionary notice designed to rectify questionable deportment without the stigma of being disciplined. In Second Division Award 8062, which is directly on point with the issue herein, we stated: (in part referenced)

> "In dealing with this issue in other cases, this Board has consistently maintained the position that letters of warning are not disciplinary in nature and that their insertion in an Employee's file is not in violation of the investigative requirements of most agreements. We have maintained that properly used, letters of warning are an important and necessary device that change an employee's behavior and put him on the track without the stigma of being disciplined and having this become a part of his personnel file and his work record." See also Second Division Award 11683.

In the case at bar, the two letters of warning issued on February 13, 1989, were not discipline within the context of Rule 35 and the consistent decisional precedents of this Board and there has been no evidence that letters of warning under Rule 35 of this Agreement were subject to investigations or construed by Board decisions as matters covered under Rule 35. It might be advisable if Claimant feels otherwise to modify Rule 35 via collective bargaining so as to include letters of warning under the coverage of Rule 35, but we lack the authority to amend this provision by Board decision. On the other hand, we direct Carrier to remove these letters from his personnel file and work record. This direction is consistent with Second Division Awards 8062 and 11683.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 29th day of April 1992.

CARRIER MEMBERS' CONCURRING AND DISSENTING OPINION
TO
AWARD 12307, DOCKET 12259
(Referee Roukis)

The Majority correctly found that the letters of warning were not discipline and that the discipline rule did not apply to warning letters and conferences in connection therewith. That is where the adjudication process should have stopped. That was all the Board was asked to adjudicate.

Note the Statement of Claim:

> "1. That at Jacksonville, FL. on February 13, 1989, CSX-T violated the Controlling Agreement when Supervisor Communications Mr. G. P. Elam instructed Communications Maintainer Mr. P. W. Casale, ID #197590, to report to Carrier's Office and placed two (2) letters on personal record which established a discipline hearing and Mr. Casale was denied his duly authorized representative."
>
> "2. That Communications Maintainer Mr. P. W. Casale and any other Communications employee represented by the International Brotherhood of Electrical Workers (SCL) be allowed during a discipline hearing to have representation by his duly authorized representative as the above was in violation of said rules on February 13, 1989."

For some reason, the Majority committed a grievous error by going beyond that which it was asked to do and added unwarranted, unwanted, unsolicited dicta that said letters were to be removed "...from his personnel file and work record...." We do, therefore, strenuously protest such extemporaneous dicta and do vigorously dissent to that part of the Majority's Findings.

Robert L Hicks
R. L. Hicks

M W Fingerhut
M. W. Fingerhut

Michael C. Lesnik
M. C. Lesnik

P V Varga
P. V. Varga

James E. Yost
J. E. Yost