

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

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers
(Kansas City Southern Railway Company

STATEMENT OF CLAIM:

1. That the Kansas City Southern Railway Company/Louisiana & Arkansas Railway Company unjustly placed letters of reprimand dated December 10 and 12, 1989 on the personal files of Electrician R. M. Scaife at Shreveport, Louisiana without the required fair and impartial investigation thereby violating Rule 29 (1) of the April 1, 1980 controlling agreement.

2. That, accordingly, the Kansas City Southern Railway Company/Louisiana & Arkansas Railway Company be ordered to remove these letters dated December 10 and 12, 1989 from the personal file of Electrician Scaife.

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.

This dispute arose because, on December 10, 1989, the Carrier's General Foreman wrote the Claimant a letter to confirm a conversation between himself, the Claimant and the Local Chairman. The letter read as follows:

"This letter is to acknowledge conversation in my office on November 25, 1989, between yourself, Local Chairman D. D. Tyler, and myself concerning your work performance on unit 665 that failed on November 7, 1989, due to short brushes in #6 traction motor.

It was brought to your attention that on October 16, 1989, unit 665 was shopped for a quarterly inspection at the Shreveport, Diesel Shop, and that you had signed traction motors off as being inspected and okay.

You were advised that if this type work continued it could result in disciplinary action."

The issue in this claim is whether the December 10, 1989 letter constituted discipline pursuant to Rule 29(i) of the Agreement. Counseling with respect to the performance of work is an inherent and necessary part of effective supervision. Many times the substance of counseling is memorialized by means of a letter to the employee, as was the case here. Clearly, supervisors have the right to address perceived problems of employee performance before a practice results in an adverse consequence, e.g., damage to property, injury, etc. Given the disciplinary process in this industry and given the clear language and intent of Rule 29(i), which the Organization contends has been breached, the Carrier has a responsibility to make sure that counseling is just that, counseling, not discipline. The essence of the contents of any counseling letter must not be disciplinary in nature. The Board recognizes, in many instances, the fine line exists for such a determination. The Board also notes that many Awards have addressed the "counseling issue," such as we find in this case. These Awards clearly show that each situation must be judged on its own merits.

Turning to the letter of December 10, 1989, it is clear that the Carrier decided that the Claimant had erred. It made a finding of fact adverse to the Claimant. The December 10, 1989 letter is a part of the Claimant's file and, as clearly implied, would be used for disciplinary purposes at a later date.


For all of the foregoing, we will sustain the claim.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Devlin - Executive Secretary

Dated at Chicago, Illinois, this 27th day of May 1992.