

CORRECTED

	NATIONAL RAILROAD ADJUSTMENT BOARD	
Form 1	SECOND DIVISION	Award No. 12698
		Docket No. 12728
		94-2-93-2-68

The Second Division consisted of the regular members and in addition Referee John F. Hennecke when award was rendered.

(International Association of Machinists and
(Aerospace Workers

PARTIES TO DISPUTE: (
(Norfolk Southern Railway Company

STATEMENT OF CLAIM:

- "1. That the Norfolk Southern Railway Company violated the controlling Agreement, Rule 34, but not limited thereto, when they unjustly disciplined Machinist O. W. Nance, without the benefit of representation or a proper investigation. The assessed discipline was a letter of reprimand, dated December 3, 1990, placed in Machinist Nance's file.
2. That accordingly, the Norfolk Southern Railway Company be ordered to remove the letter placed in Machinist Nance's file and all references to same."

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 waived right of appearance at hearing thereon.

Claimant was employed as a Machinist at the Chattanooga System Assembly Shop in Chattanooga, Tennessee. On November 30, 1990, Claimant was called into the office of the General Foreman to discuss Claimant's work performance. On December 3, 1990, the General Foreman confirmed the discussion with a memorandum, as follows:

"On November 30, 1990, at 5:30 A.M., O. W. Nance was brought to the office for a counseling session. The reason for the counseling was primarily work performance, although other topics were necessarily discussed.

Topics of discussion included:

- 1) Failure to complete work assignment. Three consecutive 'prep and apply' shifts in one week were left uncompleted resulting in three lost engine shifts. A variety of other instances of lost engine shifts were discussed as well.
- 2) Repeated instances of layshafts being caught by power assemblies being removed resulting in bent layshafts and broken layshaft support caps.
- 3) Lackadaisical and indifferent attitude toward the responsibility of completing assigned tasks along with inappropriately long breaks and lunch periods. Compliance of existing time schedules for these periods was required.
- 4) Safety rule violation. Discussed was O. W. Nance's leaving of a suspended power assembly (by crane) unattended on unit #6127 after the end of the 11/28/90 shift. Rule 1552 was read and incident was discussed. It was strongly expressed that the rule was not only for the protection of employees, but for the protection of valuable company equipment as well.
- 5) It was indicated that I was not satisfied with his work performance and attitude, and that change was necessary.

O. W. Nance indicated an understanding of his responsibilities relating to the above topics."

The Organization contends that the above cited memo was a letter of reprimand and that it was very "accusatory" in nature, accusing Claimant of violation of a Safety Rule and other infractions. The Organization contends that this constituted "discipline" and, thus, Carrier was guilty of disciplining Claimant, without the benefit of a fair and impartial hearing and without benefit of representation, in violation of Rule 34 of the Agreement. The Organization relies upon Second Division Awards 10676 and 12514, to support its position.

Carrier contends that Rule 34 was not violated because the memo was not discipline. Carrier states that management has an inherent right to communicate in writing to its employees regarding the requirement that duties be performed properly and safely. Carrier cites Public Law Board No. 3858, Award 116 and Public Law Board No. 5015, Award 26 on this property involving the same Agreement and Public Law Board No. 2789, Awards 41 and 64 and Public Law Board No. 2789, Award 7 on an affiliated property in support of its position.

We find the Awards cited by Carrier to be the more persuasive. Nothing in the Parties' Agreement prohibits the Carrier from having a counseling session with one of its employees and then confirming such discussions in writing. Such an action is not discipline and, therefore, Rule 34 does not apply.

The Organization is concerned that this counseling memorandum will be used later for disciplinary purposes. However, as held in previous Awards on this property, this type memorandum cannot be used in any form or manner associated with discipline at any time. Nor may it be used as a determinant of the degree of discipline that may be assessed in any future formal disciplinary action. To do so would be an improper use on the Carrier's part. Since no violation of the Agreement has been demonstrated, the Claim must be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:



Linda Woods - Arbitration Assistant

Dated at Chicago, Illinois, this 4th day of May 1994.