

CORRECTED

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 12699
Docket No. 12729
94-2-93-2-69**

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 V. Allen, without the benefit of representation or a proper investigation. The assessed discipline was a letter of reprimand, dated February 8, 1991, placed in Machinist Allen's file.
2. That accordingly, the Norfolk Southern Railway Company be ordered to remove the letter placed in Machinists Allen'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 by Carrier as a Machinist at the Chattanooga Diesel Shop in Chattanooga, Tennessee. On February 8, 1991, Carrier's Senior General Foreman met with Claimant to discuss the application of Safety and General Conduct Rule 1040 to the wearing of hearing protection in the specified shop areas. On February 11, 1991, the Senior General Foreman confirmed the discussion in a letter addressed to Claimant, as follows:

"This letter will confirm our meeting on February 8, 1991, concerning your violation of Norfolk Southern Rule(s) 1040, on February 8, 1991, where you were observed, not wearing your hearing protection while truing a wheel on Track 7 wheel machine. This is also a violation of special instructions prescribed by your immediate supervisor.

Safety Rule 1040 reads as follows:

'Safety equipment such as hard hats, eye and hearing protection, protective footwear, steel insoles, ice creepers, belts, lanyards, protective clothing gloves, spats, guards, full body harness, masks and respirators prescribed by instructions from employing departments must be worn in specified areas, jobs or conditionss.'

This matter is being handled with you, in that Safety is of the first importance in the discharge of duty. Knowledge of and compliance with the rules are essential to your safety as they can prevent injury to yourself and other employees.

Employees who persist in unsafe practices may be subject to discipline.

A copy of this letter will be placed in your Service Record."

The Organization contends that the above cited letter constituted a reprimand and was very "accusatory" in nature, in that it accused Claimant of violating a Safety Rule and advised him that employees who persist in unsafe work practices may be subject to discipline. The Organization argues that the letter was "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 responds that the letter in question did not impose a penalty of any kind, and, therefore, cannot be characterized as "discipline." Carrier argues that it has an inherent right to establish safety rules and an obligation to promote obedience to those rules to ensure a safe and efficient environment for its employees. Carrier further states that it has an inherent right to discuss job-related matters with its employees and confirm such discussions via counseling letters, placed in the involved employee's file. Carrier contends that this procedure does not constitute "discipline" and, thus, Rule 34 has no application and has not been violated. 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 to support its position.

We find nothing in the Agreement which prohibits Carrier from having counseling sessions with its employees and placing written confirmation of such sessions in the employee's files, provided Carrier does not use or refer to such letters in any future formal disciplinary procedures. The Claim herein is premised upon speculation as to what Carrier might use this letter for in the future. The Organization cannot sustain its Claim based solely on speculation. Should Carrier attempt to cite or refer to this letter in the future or consider it in weighing the degree of discipline to assess in a subsequent discipline procedure involving Claimant, then the Organization will have the basis for an objection. At the present time, there has been no violation of Rule 34 and the Claim will be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Linda Woods
Linda Woods - Arbitration Assistant

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