

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12792
Docket No. 12581
94-2-92-2-133

The Second Division consisted of the regular members and in addition Referee Rodney E. Dennis when award was rendered.

PARTIES TO DISPUTE: (International Association of Machinists
(and Aerospace Workers
(
(Union Pacific Railroad Company

STATEMENT OF CLAIM:

"That the Missouri Pacific-Union Pacific Railroad violated Rule 32 of the Current Controlling Agreement between the International Association of Machinists and Aerospace Workers and the Missouri Pacific-Union Pacific Railroad Company dated June 1, 1960, when it harshly and unjustly placed a letter of discipline dated August 28, 1991, on the personal record of Machinist D.A. Barker.

That the Missouri Pacific-Union Pacific Railroad Company remove from the personal record of Machinist D.A. Barker the August 28, 1991, letter of discipline and clear his service record of all references to the incident."

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 is employed by Carrier at its North Little Rock Jenks Facility in North Little Rock, Arkansas. On August 28, 1991, Claimant and his Manager met to discuss Claimant's safety record and to engage in training concerning working safely. As a result of the August 28, 1991, session, the Manager issued a letter to Claimant recording what took place at the session. Copies of the letter were placed in Claimant's personal file, as well as distributed to the Local Chairman and appropriate Management personnel. The letter reads as follows:

"AUGUST 28, 1991

MR. D.A. BARKER
20 VALLEY RD.
CABOT, AR 72023

DEAR MR. D. A. BARKER

ON AUGUST 28, 1991, YOU ATTENDED A PERSONAL SAFETY CONFERENCE AT JENKS SHOP.

AS YOU WILL RECALL, WE DISCUSSED YOUR PERSONAL INJURY RECORD AND HOW YOU CAN AVOID BEING INJURED IN THE FUTURE. THE PURPOSE OF THE CONFERENCE WAS TO MAKE YOU AWARE OF YOUR PERSONAL INJURY EXPERIENCE AND HOW SAFETY EFFECTS YOU, YOUR FAMILY, AND ALL RAILROAD EMPLOYEES. WE APPRECIATE YOUR COOPERATION DURING THE MEETING AND YOUR COMMITMENT TO FOLLOW SAFE WORK PROCEDURES.

WE SINCERELY HOPE THIS MEETING WAS BENEFICIAL TO YOU AND WILL ASSIST YOU IN YOUR EFFORT TO BE A SAFE, PRODUCTIVE, AND EFFICIENT EMPLOYEE.

IF DESIRED, ADDITIONAL SAFETY TRAINING COVERING ANY FACET OF YOUR DUTIES WILL BE AFFORDED YOU UPON REQUEST.

S. J. SLATTERY

CC: H. SYERS--MANAGER OF SAFETY SERVICES
D. HALL--LOCAL CHAIRMAN
L. EOFF--SAFETY COORDINATOR"

As a result of this letter being placed in Claimant's file, a claim was filed alleging that the letter constituted discipline. Consequently, it was a violation of Rule 32 of the current controlling Agreement. Rule 32 states that an employee who is disciplined must first be afforded a fair and impartial hearing. The Organization reasoned that since the letter constituted discipline and no hearing was held, Carrier violated the Agreement. The letter and any reference to it should be expunged from all records of Carrier, as well as from Claimant's file.

Carrier takes the position that neither the safety conference on August 28, 1991, nor the letter in the Claimant's file memorializing the conference constitutes any form of discipline.

It is Carrier's position that the safety conference is meant to be instructive, nonthreatening, and an expression of the importance of working safely. The conference is not discipline and the letter merely indicates that Carrier has fulfilled its obligation to inform the employee about the advantage of working safely and instructing him on certain methods to be used to do so.

This Board has reviewed the identical issue with the same parties on numerous occasions. We have concluded on those occasions that placing a letter such as is at issue in this case in an employee's file does not constitute discipline and is not an Agreement violation. In those instances, the Board also stated that the recipients of such letters cannot be considered as first offenders. We see no reason to decide otherwise in this instance.

AWARD

Claim denied.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 9th day of December 1994.