Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12842
Docket No. 12718
95-2-93-2-88

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

PARTIES TO DISPUTE: (The International Association Machinists & Aerospace Workers (AFL - CIO)
(The Missouri Pacific Railroad Company

STATEMENT OF CLAIM: "The statement of claim as set forth by IAM is as follows:

That the Missouri Pacific Railroad Company violated Rule 32 of the Current Controlling Agreement between the International Association of Machinists and the Missouri Pacific Railroad Company dated June 1, 1960, as subsequently revised and amended when it harshly and unjustly placed a letter of discipline dated August 22, 1992 on the personal record of Machinist J. R. Provence account his alleged failure to record and report defects to his supervisor, without first holding a formal investigation to determine the facts.

That the Missouri Pacific Railroad Company remove from Machinist J. R. Provence's personal record the August 22, 1992, 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.

The Organization filed this Claim alleging Carrier violation of Rule 32 of the Agreement. Specifically, the Organization argues on property that a letter dated August 22, 1992 and entered into the Claimant's permanent record amounts to discipline. The Organization maintains that the Claimant is protected from discipline by Rule 32, unless provided with his Agreement rights to a fair and impartial Investigation. Absent Investigation, the letter inserted into the Claimant's personal record is violative of the Agreement.

The Carrier denies that the letter is anything other than the report of a conference between the Manager and the Claimant. It notes that the letter states only performance expectations. Contrary to the Organization's characterization of the letter as containing "accusatory tones" which could "indisputably be construed as discipline," the Carrier denies that the letter is anything other than a documented conference.

In reaching its decision, this Board has carefully reviewed the instant letter in light of the prior Awards raised by both parties to this dispute. The Organization has directed our attention to Awards which have removed such letters for violating Rules and constituting discipline (Second Division Awards 7588, 9412, 12513, 12514). The Carrier has emphasized those Awards holding that letters of warning or those general enough to constitute non accusatory conference letters do not violate Rules as herein alleged (Second Division Awards 9522, 12448).

This Board has reviewed the disputed letter. We have studied its language to determine if it makes a conclusionary finding that the Claimant violated a Rule. We have reviewed its contents to assess whether it is general or specific, discussing the employees performance or containing language implying a Rule violation. The letter is a form letter addressed to the Claimant. The underlined areas are blank lines in the form letter filled in with what follows:

"Dear Mr. Provence:

This will confirm my discussion with you on 8-22, 1992 at 9:00 p.m. at the Phase II Ramp Office, concerning your responsibility to Inspect Locomotives. In this regard you have been advised that you must ensure that all defects are recorded and your supervisor informed so as to ensure steps are taken to correct them and it is your responsibility as inspector to report any defect that has not been corrected.

If you fail to meet the above expectations, it may result in Formal Investigation, I know you can meet these expectations, and I am here to help you succeed.

Any questions concerning these expectations, please contact me at your convenience."

In view of the letter as written, this Board finds no violation of the Agreement Rule 32. Unlike the Awards cited by the Organization, supra, there is no statement alleging that the Claimant violated any specified Rule of the Agreement. There is no unequivocal statement that the Carrier has found the Claimant to have committed a violation. The Board does not find the letter to be either accusatory, or conclusionary as failing to properly fulfill responsibilities. The Board concludes that the letter is properly a conference letter and does not rise to the level of constituting disciplinary action. Its placement with the Claimant's personnel file does not violate Rule 32. The Claim is denied.

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 24th day of February 1995.