

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12923
Docket No. 12819
95-2-93-2-186

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

PARTIES TO DISPUTE: (The International Association of Machinists
(and Aerospace Workers, AFL-CIO
(
(Union Pacific Railroad Company
(Missouri Pacific Railroad Company)

STATEMENT OF CLAIM:

"That the Missouri Pacific Railroad Company (hereinafter referred to as Carrier) 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 February 3, 1993, on the personal record of Machinist E. E. Boyd (hereinafter referred to as Claimant) account his alleged failure to inform his supervisor of bad order test equipment, without first holding a formal investigation to determine the facts.

RELIEF REQUESTED

That the Missouri Pacific Railroad Company remove from Machinist E. E. Boyd's personal record the February 3, 1993, letter of discipline and clear his service record of all reference 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, Arkansas, Phase II Locomotive Repair Facility as a Machinist. On February 2, 1993, the Manager of the Phase II Facility met with Claimant to discuss his responsibility to report bad order test equipment to his immediate supervisor. On February 3, 1993, the Manager issued a letter to Claimant confirming discussions had on February 2, 1993. Copy of the letter was placed in Claimant's personal file and also given to the Local Chairman and Claimant's Supervisors. The letter reads in pertinent part:

"This will confirm my discussion with you on Feb. 2nd, 1993 at approx 5:00 PM at the Ramp Phase II Manager's Office, concerning your responsibility to inform your supervisor of Bad Order Test Equip. In this regard you have been advised that you must ensure that any time test equipment is bad order that you must inform your supervisor so repairs -or- replacement can be done.

If you fail to meet the above expectations, it may result in a formal investigation. I know you can meet these expectations, and I am here to help you succeed."

The Organization promptly filed a claim contending the letter amounted to the assessment of discipline without benefit of a fair and impartial Investigation as required by Rule 32. Failing to obtain satisfactory resolution of its claim in on-property handling, the claim has been appealed to this Board for adjudication.

This Board has reviewed the letter of February 3, 1993, and finds no language accusing Claimant of committing any rule violation and/or prohibited conduct. It, therefore, follows that the letter cannot be considered as a disciplinary action. It simply confirms a counseling session and nothing more.

This Board has reviewed this identical issue with the parties at bar and we cite with favor a part of Second Division Award 12790, reading:

"This Board has reviewed this identical issue with these same parties in the past. (See, for example, Second Division Award 12571.) In these instances, Carrier's position was upheld. Carrier has the right, if not the obligation, to instruct and counsel employees on safety matters. To do so and to place a memorandum in the record explaining what took place in the counselling session is appropriate. The reasons for counselling employees about safety matters should be obvious to all parties in the railroad industry. This is especially true when one considers the impact on a Carrier when, in an FELA case, it can be demonstrated that Carrier has neglected its obligation in regard to safety training and to maintaining a safe working environment.

The issue of whether a counselling memorandum constitutes a first step in the discipline ladder has been the subject of numerous arbitrations in the railroad industry, as well as in many other jurisdictions. The reasoned decisions on this point conclude that placing a memorandum of record in an employee's file does not constitute discipline. It should not be viewed as a first offense by Labor, Management, or a Neutral who reviews claims arising from this act in the future."

See also Second Division Awards 12791, 12792 and First Division Award 24358.

The letter of February 3, 1993, placed in Claimant's file is not to be viewed as a first offense by Labor, Management or a Neutral reviewing claims arising from this act in the future.

AWARD

Claim denied.

ORDER

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

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 16th day of August 1995.