

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12924
Docket No. 12844
95-2-93-2-237

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

PARTIES TO DISPUTE: (International Association of Machinists and
(Aerospace Workers, District No. 19, AFL-CIO
(Union Pacific Railroad Company

STATEMENT OF CLAIM:

- "1. The Carrier violated Rule 19 of the controlling Agreement by assessing discipline without a fair and impartial hearing by placing a letter of reprimand in Machinist James Fischer's (hereinafter referred to as Claimant) personal file on February 1, 1993.

RELIEF REQUESTED

2. That accordingly, Carrier be ordered to remove letter of reprimand dated February 1, 1993, from Claimant's personal file."

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 commenced employment with the Carrier in 1971. At the time of the occurrence giving rise to this dispute, Claimant was employed as a machinist in Carrier's locomotive repair shop in East St. Louis, Illinois.

On February 11, 1993, Carrier addressed the following letter

On February 11, 1993, Carrier addressed the following letter to Claimant:

"February 1, 1993

Mr. J. Fischer
Machinist

Dear Mr. Fischer:

At approximately 10:45 a.m., January 25, 1993, you were asked to align coupler on the front end of UP 2493, E track, West end of Roundhouse, to demonstrate the proper procedure to align a coupler for some guests, C. Miller, D. Korando and myself. At this time, you placed your back against the coupler and shoved. As you should know, this was in violation of Safety rules 4008A, 4008B and 4070A. Therefore, the Roundhouse Foreman, D. Korando, demonstrated the proper procedure to align a coupler.

However, since you obviously are unaware of the proper procedure to align a coupler, you will receive instructions on how to properly align a coupler. If this type of performance is repeated, disciplinary action will be taken. A copy of this letter will be placed on your personal record.

Also, I have received information that you state, 'you were trying to prove a point'. I do not understand what point you were trying to prove and if you would like to discuss this matter further, contact my office.

B. R. Jackson
Mechanical Superintendent

BRJ:js

cc: T. G. Todd
C. E. Miller
L. Faulkner
Personal Record"

On March 25, 1993, the Organization filed a claim on behalf of Claimant asserting that Carrier's letter of February 1, 1993, assessed discipline against Claimant without granting him a fair hearing as required by Rule 19 of the controlling agreement and requested that the letter be removed from his personal file.

Carrier responded by letter dated April 28, 1993, advising that its letter of February 1, 1993, did not assess discipline, but served as a "mere warning" to let Claimant know it would not tolerate the actions discussed in the letter and that it would remain in Claimant's file. The claim was thereafter handled to a conclusion on the property in accordance with the requirements of the agreement. Being unable to reach satisfactory adjustment, the dispute has been referred to this Board for adjudication.

This Board has reviewed the February 1, 1993, letter and finds that it makes a definitive finding that Claimant's demonstration of the procedure to align a coupler was in violation of Safety Rules 4008A, 4008B and 4070A. The Board is persuaded that with the finding of rule violations, the letter cannot be considered counseling but must be considered disciplinary in nature and subject to a fair hearing under Rule 19 before being placed in Claimant's file.

The Board's findings in this case are consistent with its findings in numerous prior cases involving comparable issues. For example, in Second Division Award 8062, the Board stated:

"We fully support Carrier's position that warning letters are not disciplinary and should not be viewed as such. A problem arises, however, in the way warning letters may be worded. Care must be taken not to indicate that the Employee is guilty of misconduct that would practically assure that he would be considered a second offender if brought up on charges for a similar offense in the future. We have decided in a recent case on this issue (Award No. 7588, Second Division) that letters containing accusations of guilt for a specific act should be considered disciplinary in nature and subject to investigation and a full and impartial hearing before being placed in an Employee's file."

See also Second Division Awards 12513 and 12514.

AWARD

Claim sustained.

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ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

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