Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 13045
Docket No. 12832
96-2-93-2-230

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

PARTIES TO DISPUTE: (International Association of Machinists
(& Aerospace Workers, AFL-CIO
(
(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 April 30, 1993, on the personal record of Machinist N. Givens (hereinafter referred to as Claimant) account his alleged failure to check all fluid levels before starting an engine, without first holding a formal investigation to determine the facts.

Relief requested: That the Missouri Pacific Railroad Company remove from Machinist N. Givens' personal record the April 30, 1993 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 were given due notice of at hearing thereon.

The Claimant was requested to and did participate in a scheduled discussion with his Manager, after which the Manager wrote to him on April 30, 1993 as follows:

> "This will confirm my discussion with you on 4-30-93 at approximately 7:15 a.m. at the Ramp Conference Room concerning your responsibility to inspect engines before starting. In this regard you have been advised that you must ensure that anytime you are lined up to start an engine, ensure that all fluid levels are checked and proper levels reached before starting the engine. This will ensure that no components will fail for lack of lubrication or cooling.
>
> 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.
>
> Any question concerning these expectations, please contact me at your convenience."

A copy of this letter was placed in the Claimant's record.

The Organization contends that this is a "letter of discipline" and that the Carrier has violated Rule 32 by imposing such discipline without providing the Claimant with "a fair and impartial investigation". Rule 32 reads in pertinent part as follows:

> "(a) An employe covered by this agreement who has been in service more than 30 days . . . shall not be disciplined or dismissed without first being given a fair and impartial investigation by an officer of the railroad. . . .
>
> (b) At a reasonable time prior to the investigation, the employe will be apprized of the precise charge against him and the time, date and place set for the investigation. . . ."

Involved here is the Carrier's right to advise and train an employee concerning work performance, including prediction of future consequences; to write to the employee that such has occurred; and to place a copy of such notification in the employee's personal file. In contrast to this is the employee's right to an Investigation prior to the imposition of discipline.

This is by no means a case of first impression. Among other Awards, Second Division Award 12571, involving this Organization and the Union Pacific, found no problem in the preservation of both these rights, stating as follows:

"The Organization strongly protests the placement of the April 12 letter in the Claimant's personnel record file because it can be construed as discipline for which the Claimant has not had a fair and impartial investigation. However, the Board finds no language in the letter which states that the Claimant has committed any infraction of a safety rule. Such a statement could trigger legitimate concern with respect to the employee's right for an investigation.

While the Organization's point is clearly understandable, the Agreement does not prohibit the Carrier from documenting its efforts to properly train and counsel employees with respect to safety matters. It is in each party's clear interest to advise and train employees with respect to safe work habits on the job."

While Award 12571 is concerned with safety matters, it would be equally applicable to operational matters. The April 30, 1993 Manager's letter contains no allegation of rule violation. It does state that failure to take advantage of the counseling could, in the event of future actual unsatisfactory work performance, lead to a formal disciplinary Investigation. By itself, however, the letter cannot be considered as discipline. It records the fact that a particular work procedure has been discussed with the employee, and there is no Agreement violation in making a record of such event.

The Organization cites, among others, Second Division Awards 12513 and 12514, which sustained the Claims that letters placed in the employees' personal files were, in fact, disciplinary in nature and thus must be removed since there was no Rule 32 Investigation preceding the imposition of discipline. These Awards, however, support the Board's denial Award in the instance here under review, because they referred to specific instances of alleged unsatisfactory work performance and the Rules supposedly violated. This is readily distinguishable from letters which simply record that an employee has been advised as to appropriate manner in performing certain assignments.

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.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 25th day of September 1996.