

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 13069
Docket No. 12879
96-2-94-2-55

The Second Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

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

STATEMENT OF CLAIM:

"DISPUTE - CLAIM OF EMPLOYEES

- (1) 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 October 14, 1993, on the personal record of Machinist R. L. Brooks, (hereinafter referred to as Claimant) account his alleged failure to properly inspect tool boxes and ensure that all tools are accounted for, without first holding a formal investigation to determine the facts.

RELIEF REQUESTED

- (1) That the Missouri Pacific Railroad Company remove from Machinist R. L. Brooks' personal record the October 14, 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 hearing thereon.

Claimant is employed as a Machinist at Carrier's North Little Rock, Arkansas Phase 11 Locomotive Repair Facility. On September 14, 1993, Manager P. W. Smith met with the Claimant to discuss his duties and responsibilities in dispersing tools to fellow employees. On October 14, 1993, Manager Smith provided Claimant with written confirmation of the Manager's Conference, and placed a copy in his personal file. The letter reads, in pertinent part:

"This will confirm my discussion with you on Sept. 14, 1993 at 3:40 p.m. at the Ramp - Phase 11 building, concerning your responsibility to properly inspect tool boxes. In this regard you have been advised that you must ensure that as the Tool Room Machinist, it is your responsibility to ensure that the tools that are in the tool boxes when checked out - are in the boxes when they are checked back in and to make a list of missing tools and inform your supervisor of any discrepancies pertaining to.

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 filed a claim contending that the letter amounted to the assessment of discipline without benefit of a fair and impartial hearing as required by Rule 32.

As noted in Award 2 of Public Law Board No. 4173, this Board has ruled that a letter of counseling does not constitute discipline provided that it does not contain a definitive finding that an employee committed an infraction. This Board has reviewed the letter of October 14, 1993, and finds no language accusing Claimant of committing any rule violation and/or engaging in any prohibited conduct. It merely confirms a prior management conference wherein Claimant was informed about his responsibility concerning dispersing tools. Thus, we conclude that the letter in issue cannot be considered disciplinary, and find no violation of the Agreement in its placement in Claimant's personal file without first complying with Rule 32's formal Investigation requirement. Second Division Award 12923. This letter should not be viewed as a first offense by Labor, Management, or a Neutral who may review a claim arising from this type of act in the future. Second Division Awards 12790, 12791, 12792, 12923.

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AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that 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 1996.