

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 13087
Docket No. 12976
96-2-94-2-128

The Second Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

(International Brotherhood of Electrical
(Workers
PARTIES TO DISPUTE: (
(CSX Transportation, Inc. (former
(Chesapeake and Ohio Railway Company)

STATEMENT OF CLAIM:

- "1. That the former C&O Railroad Company, now CSX Transportation, Inc., in violation of Rule 37 of the controlling agreement, issued discipline by written reprimand to Electrician W. N. Hutchinson by letters dated February 18 and March 16, 1993, without benefit of a fair hearing, and accordingly;
2. That CSX Transportation, Inc., expunge Electrician W. N. Hutchinson's record of any and all mention of this matter."

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.

At the time this claim arose, Claimant was assigned as an Electrician in Carrier's Huntington Locomotive Shop. On February 16, 1993, Claimant's Supervisor observed him in the Traction Motor Shop, with food and a beverage next to him, ten minutes prior to break time. In addition, Claimant was not wearing his hard hat or safety glasses.

Following a meeting which included Claimant, his Local Chairman, and other company officials, a letter dated March 16, 1993 was placed in Claimant's personal file. In the letter, Claimant's Supervisor advised him that such behavior would not be tolerated in the Huntington Shop, and that he was expected to work during the specified work time. The letter also stated that failure to work during specified work times would "result in further action."

In a letter dated May 4, 1993, Claimant's Local Chairman took exception to the handling of the incident and alleged that the memorandum placed in Claimant's file was a form of discipline, in violation of Rule 37 of the Shop Crafts Agreement. The Carrier denied the claim on July 2, 1993, stating that the placement of a memo was permitted under the Agreement. It also referred the Organization to a memorandum of June 1, 1993 to all employees in which the Carrier explained that the purpose of placing a memo or letter in a personal file was to encourage employees to "change work practice or behavior." That memorandum also stated that changing (or not) was the decision of the employee, but further occurrences "could result in formal discipline." Carrier's denial was appealed and subsequently progressed in the usual manner.

This is certainly not a case of first impression. Numerous Boards have dealt with this issue, and almost uniformly have found that letters of counseling or caution that future behavior of the kind noted will result in discipline are simply a method for alerting an employee to work practices or conduct that the Carrier deems unacceptable (Second Division Award 8062). Such letters do not constitute discipline, nor may they be used by Carrier as a "first step" in a progressive discipline system. The Organization objected to the wording of the letter in question as accusatory. The letter reasonably specifies the behavior to which the Carrier is taking exception. Accordingly, Claimant is now on notice that if he engages in that particular behavior in the future, he may be subject to discipline. The letter itself, however, does not constitute discipline.

AWARD

Claim denied.

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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 9th day of December 1996.