

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13311

Docket No. 13138

98-2-96-2-38

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

(Sheet Metal Workers' International Association

PARTIES TO DISPUTE: (

(CSX Transportation, Inc. (former Chesapeake and
(Ohio Railway)

STATEMENT OF CLAIM:

- "1. That under the current agreement, Sheet Metal Worker Robert Cecil was unjustly issued discipline of a written reprimand nature when he was given a letter of Workmanship Error on Unit 8395 dated January 5, 1995, without the benefit of a fair hearing.
2. That accordingly, CSX Transportation, Inc., be required to expunge Mr. Cecil'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.

On January 5, 1995 Claimant, a long-term Sheet Metal Worker at Carrier's Huntington Locomotive Facility in Huntington, West Virginia, and then Local Chairman, was issued the following letter which was placed in his personal file:

**"Subject: Record of Coaching/Counseling Session - Workmanship
Error on Unit 8395**

This letter will confirm conference to discuss a workmanship error in connection with a load test failure on Unit 8395 on December 16, 1994.

During load test and dispatch procedures on Unit 8395, it was found that the bell line fittings for the event recorder were crossed at the tee. This poor workmanship created a delay in the processing of this locomotive. The work packet shows that you signed for this modification work.

Having brought this to your attention, I am sure that you are aware that poor workmanship such as this will not be tolerated at Huntington Shop.

I trust that this conference will serve as a reminder of the importance of doing the job right the first time, every time."

By letter dated February 19, 1995, Claimant provided his explanation of the events in question, including his assertion that the tees to the various pipe lines had been applied by employees on a prior shift who had not signed off for them on the modification sheet, and that he and Sheet Metal Worker Bias only cut and fitted plastic lines from the tees to the event recorder and signed off the job as "finished." Claimant requested removal of the letter from his personnel file.

The Organization contends that this letter of reprimand is disciplinary in nature and the admitted first step of Carrier's progressive disciplinary procedure, and that its issuance without a Hearing is a violation of Rule 37. It relies upon Second Division Awards 12514, 12513, 12338, 11249, 10694, 10676, 9412 and 7588 in arguing that it should be expunged from Claimant's file.

Carrier asserts that the memorandum was a letter of coaching/counseling which is not a form of discipline, and that Carrier has the right as well as the obligation to remind employees of their responsibility to perform work in a safe, quality and cost effective manner, citing Public Law Board No. 5933, Award 21; Public Law Board No. 5016, Award 5 and Third Division Award 2987. In its declination letter of April 11,

1995 Carrier states that "although such letters are the first step of CSX discipline policy, they are not part of the discipline process." Carrier contends that the letter in question is not a formal reprimand and does not find Claimant guilty of violating a Rule, and is not converted into discipline merely by its being placed into a formal file, relying upon Second Division Awards 12923, 12699, 9522, 8531 and 8062.

A review of the record reveals that the Mechanical Department's Policy on Unsafe Acts/Workmanship Errors/Vehicle Accidents was implemented on March 1, 1994. It lists the progressive disciplinary steps as follows:

- "First Incident - Counsel by Supervisor. Complete appropriate training. Letter to employee.
- Second Incident - Disciplinary Hearing. If guilty: up to five (5) days actual suspension.
- Third Incident - Disciplinary Hearing. If guilty: up to thirty (30) days actual suspension.
- Fourth Incident - Disciplinary Hearing. If guilty: the discipline administered should be dismissal."

This dispute raises more than the classic issue of whether the content of the January 5, 1995 letter requires a finding that it is a legitimate non-disciplinary warning for the purpose of counseling alone, see Second Division Award 11846, or an accusatory reprimand with findings of guilt of wrongdoing on Claimant's part, as in Second Division Award 11249. Review of the language used in the letter alone could arguably support either position. However, when considering the language concerning "a workmanship error" and "poor workmanship" in conjunction with Carrier's written policy on workmanship errors outlined above, it is clear that the January 5, 1995 letter is the first step in Carrier's progressive disciplinary procedure, which will be relied upon by Carrier in the future in imposing up to a five day suspension upon Claimant if he is found guilty of a workmanship error within the next five years. The other Awards on the property cited by Carrier dealt with letters placed in employees' files prior to the March 1, 1994 effective date of this policy.

The Board's reliance upon the wording of Carrier's progressive disciplinary policy in concluding that the letter in issue, in effect, finds that Claimant committed a workmanship error on Unit 8395, is in no way intended to undermine Carrier's efforts to place employees on notice of its expectations and its responsibility to counsel employees concerning any perceived inadequacies prior to placing them into the formal progressive disciplinary procedure. Any counseling letters of such import would certainly be proper, even if placed in an employee's file, so long as it was clear that such letter did not constitute the first incident under its progressive disciplinary policy. Carrier should consider modifying its written policy to provide for a disciplinary Hearing for all incidents which fall within its stated progressive disciplinary steps, and for permitting the issuance of counseling letters prior to entering into the formal disciplinary procedure.

As in Second Division Award 12338 dealing with an allegation of poor work performance on a particular unit, we find that the January 5, 1995 letter made a finding of fact adverse to Claimant without the holding of a Hearing under Rule 37, and direct that it be removed from his file.

AWARD

Claim sustained.

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 6th day of August 1998.