

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 13401

Docket No. 13194

99-2-96-2-108

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

**(Brotherhood Railway Carmen, Division of
(Transportation Communications International Union**
PARTIES TO DISPUTE: (
(Springfield Terminal Railway Company

STATEMENT OF CLAIM:

“Claim of the Committee of the Union that:

- (1) That the Springfield Terminal Railway Company (hereinafter ‘Carrier’) violated our agreement when they arbitrarily entered into the personal record and file, a memo advising Carman Gary A. Burnett (hereinafter ‘Claimant’) that should his absenteeism continue, disciplinary action would result. This is after the Carrier sustained a portion of this claim to pay the Claimant for days absent on a requested personal leave.
- (2) That, accordingly, the Springfield Terminal Railway Company be ordered to remove this memo from the personal record and file of Carman Gary A. Burnett.”

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.

This claim protests Carrier's placement of a letter concerning Claimant's absenteeism into his personal file. It was part of a broader claim challenging Carrier's denial of a personal leave day to Claimant on May 30, 1995, resulting in the loss of holiday pay on May 29, 1995, which was resolved after conference by Carrier's agreement to permit the personal day and pay for the holiday. The Organization pursued this aspect of the claim arguing that the issuance of the letter was linked to Carrier's denial of the personal day.

The thrust of the Organization's on-property argument is that the letter is disciplinary in nature and violates Rule 31 of the Agreement. The content of the May 30, 1995 letter issued to Claimant by his Manager is as follows:

"After reviewing your payroll records and absentee reports, these records indicate that from January 1995 to the present date you have been absent five days. For most other employees at East Deerfield, MA, for the same period, one day is the average. Absenteeism is not something we take lightly. Please be advised that a copy of this letter will go into your personnel file and should the absenteeism continue, some type of disciplinary action will result."

The Organization submitted documentary evidence to prove that the absences cited were all for documented legitimate illnesses and should not result in discipline. It also contends that Carrier knew that Claimant was a volunteer Deputy Fire Chief and had excused his past absences concerning fire-fighting duties without threat of discipline. It avers that this letter would not have been issued if Claimant was not absent on May 30, 1995, an absence directly related to his fire-fighting duties and eventually excused by Carrier's settlement of that portion of the initial claim.

Carrier argues that the Organization failed to sustain its burden of showing that the issuance of this letter violated either a contract rule or practice of the parties. It notes that the letter is cautionary, and not disciplinary in nature, citing Public Law Board No. 5527, Award 22; Second Division Awards 12923 and 12924; Third Division Award 29583; First Division Award 24358; and that it is admitted that Carrier has a practice of issuing cautionary letters to its employees.

The Board has reviewed the record and finds that, under the standard established by the Board in cases of this type, the May 30, 1995 Absenteeism Memo cannot be categorized as disciplinary in nature. The language does not accuse Claimant of committing any rule violations or engaging in any specific prohibited conduct, but does caution him that Carrier perceives his absenteeism as a problem as it exceeds the shop average. While the timing of its issuance lends credence to the Organization's contention that it was triggered by the May 30, 1995 incident, the fact remains that such date was not specified in the letter, and Carrier is within its rights to review an employee's personal file whatever the motivation. A review of the initial claim reveals the Organization's explanation of six dates Claimant was absent due to illness in January and February 1995. Thus, the cautionary letter in issue clearly relates to absences prior to May 30, 1995.

Accordingly, we find that Carrier did not violate Rule 31 when it issued the May 30, 1995 Memo regarding Absenteeism to Claimant without first holding a disciplinary Hearing.

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 8th day of June 1999.