

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13402

Docket No. 13282

99-2-97-2-54

The Second Division consisted of the regular members and in addition Referee Martin H. Malin 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 violated the terms of our current agreement, in particular Rule 13 when they arbitrarily entered a letter of discipline into the personal record and file of Carman Wayne E. Johnston for the same alleged violation that he served discipline only six (6) days earlier. This, without providing a fair and impartial hearing as set forth in our collective agreement.**
- 2. That, accordingly, the Springfield Terminal Railway Company be ordered to remove this discipline letter from the personal record of Carman Wayne E. Johnston.”**

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 July 22, 1996, Carrier instructed Claimant to report for a Hearing on August 20, 1996. The notice charged Claimant with "being a chronically unsafe employee as shown by your safety record from March 1995 through July 1996. The most recent alleged incident occurred July 19, 1996 at 13:15 hours while working as a Carman on the Waterville Repair Track. You were observed using a torch without wearing proper eye protection." The following day, Claimant signed a letter accepting responsibility, waiving his right to a Hearing, and agreeing to a two day suspension, to be served on July 30 and 31, 1996.

On July 31, 1996, the General Manager Car Maintenance issued a letter to Claimant "confirming our discussion at the meeting held on 7/29/96 . . ." The letter advised that the General Manager had told Claimant that his record of safety observations was unacceptable and would not be tolerated. It stated Claimant's safety failures were mostly of the same Rule, the one governing eye protection. It further advised Claimant that if he continued to disregard the Rule, Carrier might well terminate his employment.

The parties disagree over whether the July 31, 1996, letter was discipline. Numerous Awards have considered the line between non-disciplinary counseling and discipline. A detailed review of the precedent appears in Third Division Award 31489. The Board observed that claims generally are sustained when "supposedly counseling letters accuse the claimants and find them guilty of specific Rules violations," and that claims generally are denied when "letters . . . merely caution employees concerning their future conduct . . ., even when placed in their files and even if they indicate that future misconduct may result in disciplinary action. . . ."

The July 31, 1996, letter accused Claimant of violating the Eye Protection Rule and found him guilty of the same on an unacceptable number of occasions. Carrier's contention that the letter was mere counseling is not credible. The letter's accusations were of the same Rule violations for which Claimant had just accepted responsibility and received a two day suspension. The letter constituted additional discipline not agreed to in the Letter of Responsibility that Claimant had signed and imposed without a fair Hearing. There is no question that the claim must be sustained.

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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 8th day of June 1999.