Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 13500
Docket No. 13334
00-2-98-2-20

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

PARTIES TO DISPUTE: (Brotherhood Railway Carmen Division
(Transportation Communications International Union
(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 placed a memo concerning absenteeism into the file and record of Carman Charles R. Philbrick.

(2) That, accordingly, the Springfield Terminal Railway Company be ordered to remove this memorandum, dated January 15, 1997, from the service folder of Carman Charles R. Philbrick."

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.

The instant claim protests the placement of a memo dated January 15, 1997 concerning a meeting held with the Claimant regarding absenteeism into his personal file on two bases. First, the Organization contends that the memo itself constitutes discipline which was issued without a fair and impartial hearing in violation of Rule 13.1. Second, the Organization asserts that the Claimant had already received and served a suspension resulting from the same absenteeism matters contained in the memo, and was therefore being subject to double discipline for the same charges in violation of Rule 13.4.

The Carrier contends that the memo in issue is non-disciplinary in nature and merely confirms a meeting held with the Claimant, and thereby does not fall under the provisions of Rule 13, citing Second Division Awards, 8062, 8531, 12923, 12924; Third Division Awards 27805, 27807, 31489; First Division Award 24358; Third Division Award 29583. It alleges that the Claimant's suspension is the subject of a separate charge not encompassed herein, and notes that he has a prior record of absenteeism, relying on Public Law Board No. 4623, Award 43 and Public Law Board No. 5805, Award 4.

A careful review of the record, with specific emphasis on the wording of the three page January 15, 1997 memo, convinces the Board that the memo is not disciplinary in nature, and sets forth what was discussed by all participants. The letter states that the meeting is non-disciplinary and for the purpose of discussing the Claimant's attendance and impressing upon him the importance of being at work. The letter does not accuse the Claimant of any specific rule violations, but does caution him that his attendance improvement from the prior year was insufficient and that further improvement was necessary. It also notes the Organization's objection to use of memos of this sort in the future. The Board has held that such documentation does not require a formal hearing under the provisions of Rule 13.1. See Second Division Awards 8062, 12924; Third Division Award 27805.

Having found that the Claimant was not doubly disciplined for the same infraction, we feel obliged to note that the Claimant was issued a 30 day suspension on November 22, 1996 as a result of a hearing concerning his absenteeism, he served the suspension, and returned to work when eligible. The Claimant missed no time between his return to work and the initiation of the January 7, 1997 meeting which led to the January 15, 1997 memo in issue. The Carrier's assertion that the memo was for the purpose of educating the Claimant away from unacceptable behavior and was an

attempt to make known to him that the Carrier is concerned, is suspicious when considered in line with the fact that the Claimant had just served a 30 day suspension for excessive absenteeism and had missed no time during the 12 day period since his return to service when he was called into this meeting. While the Carrier is well within its rights to counsel an employee concerning unacceptable behavior and to make known the expected standard of conduct, as well as to record and file documentation of such counseling session, the only valid purpose for which such memo may be used is to show that the employee had knowledge of the Carrier's concerns and expectations. It would be reasonable to assume that the Claimant's recent suspension would have accomplished this goal.

That being said, we find that the Carrier was within its rights to place the disputed memo in the Claimant's file, although its future value is questionable.

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 17th day of April, 2000.