

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13539

Docket No. 13401

00-2-98-2-90

The Second Division consisted of the regular members and in addition Referee James E. Conway when award was rendered.

(Brotherhood of Railway Carmen Division

(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 13.1 when they arbitrarily entered a memo suggesting discipline into the file and record of James Besemer. Furthermore, the carrier also threatens discipline for future safety rule violations.
2. That, accordingly, the Springfield Terminal Railway company be ordered to removed the memorandum from the file and record of Carman James Besemer.”

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 August 28, 1997, the Carrier conducted a "Safety Review" with the Claimant following an on-duty injury incurred the previous day while working on a derailment which had resulted his temporary assignment to light duty. At the time of the accident, the Claimant had been serving as a Carman/Crane Operator at the Carrier's Car Repair Facility, Lowell, Massachusetts, for approximately ten months. On September 9, 1997, the Carrier documented this meeting with the following memorandum to his file:

"On August 28, 1997, A Safety Review was held on behalf of Mr. J. P. Besemer. Present at this meeting were Mr. Besemer, Mr. M. J. Raylinsky, Mr. J. E. Austin, Mr. T. Jarrett, and myself, Mrs. T. W. McNulty.

The purpose of this meeting was to explain to Mr. Besemer the importance of complying with the company's safety rules. We explained to Mr. Besemer that no violation of the safety rules was acceptable at any time. We discussed how even the most minor rules violation could lead to an injury.

We told Mr. Besemer that he must think before performing every task, anticipate potential hazards and work to avoid them. We explained the compliance with the rules was essential in performing our work safely. Mr. Besemer was informed that the carrier did not feel it was obligated to re-train employees continuously on the safety rules. Once an employee has been satisfactorily trained they are expected to comply with the rules 100%. We told Mr. Besemer that any future safety rules violations would be dealt with in a disciplinary manner.

At this point Mr. Besemer was asked if he understood what our purpose was for holding this meeting. He indicated that he understood our purpose and intentions. Following this Safety Review Mr. Besemer received 2 days of Safety training classes."

The Organization contests the Carrier's insertion of this memo is in violation of Rule 13.1, arguing that it constitutes or threatens discipline without a fair and impartial Hearing. Additionally, it asserts that the Carrier failed to issue a proper denial at either the first or second steps of claim handling on the property.

While the memo at issue may, in our view, cozy up to the line of accusation, on balance it cannot be fairly considered as disciplinary in nature or threatening discipline, or its placement in the Claimant's file be seen as a violation of Rule 13.1 requiring a Hearing before discipline is imposed. The memo makes no reference to the Claimant's injury; does not expressly recite that the Claimant has been responsible for violating a Safety Rule; and does not state that it will be used in the context of a future incident to support assessment of more severe discipline. Rather, it appears to the Board to be a firmly worded reaffirmation of the need to comply with established Safety Rules and avoid unnecessary hazards. Nor can assigning the Claimant to two days of further training with full pay legitimately be characterized as discipline. Lastly, any attempt by the Carrier to cite this memo in some future matter as evidence of a prior offense is an argument appropriately made at that time; for purposes of this claim it is speculative and premature.

Our review of the established authority on related issues suggests that the Board has uniformly held that letters of warning are not discipline in the conventional sense. In Second Division Award 8062 "[T]his Board has consistently maintained the position that letters of warning are not disciplinary in nature, and that their insertion in an Employee's file is not in violation of the investigation requirements of most agreements."

The Carrier objects to Board consideration of the Organization's procedural argument relating to failure to provide a proper answer in claim handling as not asserted earlier on the property and thus beyond our jurisdiction. A careful review of the record supports that contention. At no point during prior handling or in its Submission were these arguments made. Accordingly, they are beyond the scope of our review.

For the reasons stated above, the claim respectfully must be denied.

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 25th day of September, 2000.