

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31079
Docket No. MW-30657
95-3-92-3-421

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Consolidated Rail Corporation

STATEMENT OF CLAIM: "Claim of the System Committee of
the Brotherhood that:

(1) The Carrier's decision to issue a letter of caution, dated October 25, 1990, to Mr. G. R. Nolan for his alleged violation of Maintenance of Way Safety Rule 13 in connection with his alleged failure to wear a safety belt on September 20, 1990 was in violation of Rule 27, Section 1(a) (System Docket MW-1809).

(2) The claim as presented shall be allowed without regard to the merits because Division Engineer E. J. Sykora did not disallow said claim in accordance with the provisions of Rule 26(a).

(3) As a consequence of the violations referred to in Parts (1) and/or (2) above, the letter of caution and all references to this matter shall be removed from Mr. G. R. Nolan's record."

FINDINGS:

The Third 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 waived right of appearance at hearing thereon.

On September 20, 1990, the Claimant and two co-workers were observed in his vehicle not wearing seat belts. The Carrier issued

the Claimant a cautionary letter regarding work responsibilities. A copy of said letter was placed in the Claimant's personnel file.

On November 6, 1990, the Organization submitted a formal request to the Carrier for removal of the cautionary letter from the Claimant's file. The Organization contended that the reason that the Claimant and his passengers were not wearing seat belts was because they were just sitting in the car eating their lunches. The Carrier did not respond to the request. On January 30, 1991, the Organization filed an appeal.

The Carrier contends that the Organization's November 6, 1990, correspondence was a "formal request" and, therefore, at the time it did not consider it a grievance. Furthermore, the Carrier argues that the "cautionary letter" which the Carrier issued to the Claimant was not "discipline", it was merely meant to advise the Claimant "to adhere to and comply with Conrail Safety Rules while working" and "noted the potential for injury to himself and co-workers in addition to the possibility of future disciplinary action for non-compliance with Carrier Safety Rules".

On June 5, 1991, the Carrier acknowledged the Organization's request as a grievance but denied the appeal pointing out that a letter of caution is not discipline.

This Board has reviewed the record in this case and we find that the "formal request" filed by the District Chairman on November 6, 1990, constituted a claim as set forth in Rule 26. Consequently, according to Rule 26, the Carrier had an obligation of responding to that claim within 60 days. Since the Carrier failed to respond to that claim within the required period, Rule 26 mandates that the claim be allowed as presented.

In this case, the Claimant was issued a letter of caution for violating a rule requiring the wearing of seat belts. The Claimant was in his vehicle at the time eating his lunch. Since the Carrier did not respond to the grievance as required by Rule 26, the claim must be allowed. The letter of caution shall be removed from the Claimant's file.

AWARD

Claim sustained.

Form 1
Page 3

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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 Third Division

Dated at Chicago, Illinois, this 1st day of September 1995.