

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32927
Docket No. MW-33817
98-3-97-3-303**

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

PARTIES TO DISPUTE: (
(Brotherhood of Maintenance of Way Employees
(CSX Transportation, Inc. (former Seaboard Coast
(Line Railroad Company)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier issued a letter of discipline to Machine Operator M. D. Moore on January 2, 1996 without the benefit of an investigation [System File 31 (4) (96)/12 (96-0502) SSY].**
- (2) As a consequence of the aforesaid violation, the Carrier shall now remove the letter of discipline from the Claimant's personal record file and he shall be made whole for any loss suffered."**

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 were given due notice of hearing thereon.

On December 1, 1995 Claimant parked a burro crane on Track No. 4, Middle Yard, at Dothan, Alabama. That track's switch was red-tagged but not spiked as necessary to ensure protection of the crane.

Carrier's policies required counseling for the oversight. Claimant was on vacation from December 4, 1995 through January 1, 1996, and a coaching/counseling session was delayed until he next reported for work on January 2, 1996. Early that morning, Roadmaster Bates gave Claimant a form letter entitled "Confirmation of Coaching/Counseling Session" that briefly summarized the December 1 incident and confirmed his discussion with Claimant. On February 7, 1996, this claim was filed with the office of Division Engineer L. S. Romaine seeking removal of that letter from Claimant's record and requesting that "he be made whole for any loss suffered. . . ."

The Organization takes the position that Carrier violated the Agreement by taking disciplinary action without affording the employee notice and a Hearing as required under Rule 39. Carrier contends that the coaching/counseling session form contained no charges of wrongdoing, did not assert Rule violations, and imposed no punishment. In sum, Carrier maintains that Claimant had been counseled and that action memorialized, but he had not been disciplined.

As is apparent from the Awards offered in support of the respective positions, the identical issue presented here has provoked debate for at least two decades with results that erect a significant barrier to any grand, sweeping epigrams.

The Organization relies upon the following authority: Public Law Board No. 2439, Award 11 (Carrier planned to use "letter of instruction" in assessing future discipline; grievance sustained); Third Division Award 25389 (Letter of caution for not requesting permission to take day off ordered removed on basis of Carrier's assertion that it was instructional, not disciplinary, and hence no reason to retain).

We read this claim as asserting that an Investigation was required in Moore's case. If so, the remaining authority cited is either not on point or does not support that theory: Second Division Award 8841 addressed a four day disciplinary suspension, and is thus not on point. Third Division Award 22008 did not adjudicate the question of whether Hearing was required; it rejected, after Investigation, Carrier's contention that reprimand required lesser burden of proof than discipline. Third Division Award 24336 also rejected, after Investigation, Carrier's contention that negligence contributed to

claimant's back injury. Third Division Award 26089 rejected, after Investigation, Carrier's contention that negligence contributed to claimant's eye injury. Thus, those Awards are distinguishable to the extent that the question of entitlement to a Hearing was not at issue. The final two Awards cited for the Board's consideration are inconvenient to Claimant's theory: Third Division Award 24953 held that a Roadmaster's letters stating that two employees "were not working fast enough" and putting them "on formal notice that your work performance is unsatisfactory" did not constitute disciplinary action. In Public Law Board No. 394, Award 26 the Neutral held that a letter of caution regarding claimant's failure to carry out reasonable instructions and containing a reminder regarding insubordination was "in line with managerial authority" and intended merely to caution claimant.

Carrier cites the following as precedent supporting its position: Public Law Board No. 5016, Case 5-B (Letter recapping attendance problems and counseling improvement placed in personnel file not discipline and within Carrier's right to memorialize); Third Division Award 29872 (Letter of reprimand may be retained in file as helpful in determining whether reasonable steps were taken by management prior to imposing discipline); Second Division Award 8062 (Letters of warning are not disciplinary in nature and their insertion in . . . files does not violate investigatory requirements. . . .); Second Division Award 9522 (Letter of warning for failure to clean underframe of car not discipline); Second Division Award 12699 (Letter confirming need to wear hearing protection in shop areas not discipline; written confirmation may be placed in files); Second Division Award 12923 (Letter confirming counseling for failure to report bad order test equipment not disciplinary action).

The Board is persuaded, based upon a careful review of the facts in this matter and the precedent provided in aid of our consideration, that issuing and maintaining a record of "coaching/counseling" sessions that have as their purpose not the "preferring of charges" but assisting the employee in conforming his behavior to Carrier's Rules does not constitute "discipline" in any traditional sense. Carrier's failure to hold a Hearing in conjunction with this incident, therefore, did not violate Rule 39 requirements in that regard.

Because there are no provisions in the Agreement prohibiting "coaching/counseling" sessions with employees, and because well accepted norms of progressive discipline generally recognize that verbal cautions are a wholesome prelude to disciplinary suspensions, the Board concludes that this claim cannot be sustained. It

may be that Claimant's concern in this instance is grounded upon fear that the counseling letter may at some future time be warmed up and served over again in the context of more serious discipline. If so, Claimant may have basis for an objection then, but that is not this case.

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 Third Division**

Dated at Chicago, Illinois, this 23rd day of November 1998.