

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29583
Docket No. MW-30158
93-3-91-3-597

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

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

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The discipline (letter of censure) imposed upon Foreman R. S. Grissette for alleged violation of CSX Transportation Safety Rule No. 110 and Engineering Department Maintenance Rulebook Rule No. 2106 on June 4, 1990 was without just and sufficient cause and in violation of the Agreement [System File 90-84/12(90-919) SSY].

(2) The letter of censure (dated June 18, 1990) referred to in Part (1) above shall be removed from the Claimant's personal 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 employe or employes involved in this dispute are respectively carrier and employe 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 June 18, 1990, Claimant was sent the following letter from the Assistant Division Engineer:

"This has reference to an incident that occurred on June 4th, 1990, near Dothan, Alabama, whereby you were observed wearing a neck chain while working on or near mechanized equipment. In addition, it was also noted that an employee under your direct supervision was also wearing a neck chain while working under similar circumstances.

As you should be aware, this is a direct violation of CSX Transportation Safety Rule No. 110, which states: 'Employees are prohibited from wearing watch chains, key chains, necklaces, bracelets or other jewelry when working around equipment or machinery in which such articles may become entangled.'

This is also a violation on your behalf of the Engineering Department Maintenance Rulebook, specifically Rule No. 2106, which states: 'Track Foreman will see that the members of their work force are familiar with their duties and will instruct them as necessary in the proper observation of the rules and safe performance of their work. Neglect or misconduct of the men under their supervision shall promptly be reported to the Roadmaster.'

This is to advise that you have been cited for 2 efficiency test violations in connection with the above referenced rules. At this time, I encourage you to take the leadership role when supervising a group of employees. We must all set the proper example if we expect those under our supervision to comply with all applicable Operating and Safety Rules. At this time, you must be committed to be a positive leader for those under your supervision which involves adherence to the Operating and Safety Rules.

Should you have any questions relative to the above, please advise."

A copy of this letter was sent by Carrier to the General Chairman. A claim was subsequently filed, alleging this letter constituted a letter of censure and was in violation of Rule 39 of the Agreement, which provides, in part, that

"Whenever charges are preferred against an employee, they will be filed within ten days of the date the violation becomes known to Management."

Carrier has denied the claim, asserting the letter was a cautionary statement, and did not constitute disciplinary action pursuant to Rule 39. The Carrier argues this Board has recognized the right of a carrier to issue such letters as a means of impressing upon its employees the importance of compliance with Safety and other Rules.

Carrier is correct that cautionary letters may be issued without resort to the discipline process. Third Division Award 24953 and Award 26 of Public Law Board No. 3794, both involving this Organization and the Seaboard Coast Line, a predecessor company of this Carrier, allowed such letters on the basis they were not disciplinary, but, rather, cautioned the employees to avoid certain conduct in the future.

The issue, however, is one of substance rather than form. Merely calling this a cautionary letter does not make it so. We must examine the content of the letter to determine whether it is in the nature of counseling or in the nature of discipline. (Second Division Award 11249). In Second Division Award 8062, the Board held:

"We fully support Carrier's position that warning letters are not disciplinary and should not be viewed as such. A problem arises, however, in the way warning letters may be worded. Care must be taken not to indicate that the Employee is guilty of misconduct that would practically assure that he would be considered a second offender if brought up on charges for a similar offense in the future. We have decided in a recent case on this issue (Award No. 7588, Second Division) that letters containing accusations of guilt for a specific act should be considered disciplinary in nature and subject to investigation and a full and impartial hearing before being placed in an Employee's file."

In Third Division Award 28920, the Board, after reciting the above quoted language, wrote:

"In this instance, the Board finds that the Carrier has clearly gone beyond 'instruction' to the Claimant, exceeding the usual advice as to future conduct. Here, as in traditional disciplinary matters, the Claimant was advised that he was in 'violation' of specific Rules and was told that any 'further violation may result in disciplinary action.' This is qualitatively different from a 'warning' or a 'counseling.'"

Viewing the letter in this context, we must find that Claimant was determined by Carrier to have violated the two Rules cited. Such is the explicit language used by the Assistant Division Engineer. This is confirmed by the letter of the Division Engineer who, in denying the initial claim, wrote:

"In this instance, the letter issued to Mr. Grissett was merely a cautionary statement issued to inform Mr. Grissett that he, in fact, had violated specific rules dealing with his safety and the employees under his direction."


The letter in question has obviously crossed the line from being cautionary to being disciplinary. As such, it was issued in violation of Rule 39, which required Carrier to take such action within ten days of the violation. As the Agreement was violated, we shall sustain the claim.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 9th day of March 1993.