

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 29872  
Docket No. MW-29821  
93-3-91-3-183

The Third Division consisted of the regular members and in addition Referee Charlotte Gold when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes  
(CSX Transportation, Inc. (former Chesapeake  
(and Ohio Railway Company, Southern Region)

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

- (1) The Carrier violated the Agreement when, without holding a disciplinary hearing, it placed three (3) letters of reprimand in the record of B&B Foreman J. Slone and refused to remove them per the request of the General Chairman after he first became aware of them on or about February 17, 1990 [System File C-M-6048/12(90-408) COS].
- (2) As a consequence of the violation referred to in Part (1) above, the three (3) letters of reprimand shall be removed from his personnel 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.

In February 1990, the letters from the personnel file of the Claimant were inadvertently attached to a transcript sent to another employee. That employee turned them over to Claimant and he, in turn, objected to their being included in his file.

Carrier maintains that the notes were not letters of caution or reprimand to be utilized for disciplinary purposes. Rather, they were intended "to serve as information regarding previous discussions concerning incidents wherein the Claimant was involved."

The Organization believes that the letters were disciplinary in nature and that Carrier erred in failing to hold a hearing in conjunction with their issuance. It argues that if they are construed as "warning/reprimands/informational letters," there is no reason for them to be retained.

This Board accepts at face value Carrier's contention that it does not intend to use the letters in question for disciplinary purposes. Clearly, if any reference were made to them on Claimant's official discipline record, that would be unacceptable.

It is also this Board's position that a record of counselling discussions held by Supervisors with employees may be retained in employment files, since this information is helpful in later determining whether reasonable steps were taken by Management prior to the imposition of discipline. By this we mean discussions that were intended to assist the employee in improving his or her performance or behavior and not simply references to incidents or discussions in which the employee was involved.

Of the three letters at issue in this case, only one--a memo written to the file by the Manager of Physical Facilities in Huntington, on April 7, 1989--meets the standard that has been established for retention, since it discusses specific incidents of counselling on a variety of dates. The other two are not acceptable. Of these, one was written by a fellow employee and the other refers to one of the incidents about which Claimant was counselled and simply describes the alleged event by a third party.

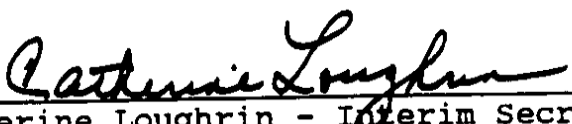
The memorandum dated April 7, 1989, written by the Manager of Physical Facilities shall be retained in Claimant's personnel file. The other two notes are to be removed.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 26th day of October 1993.