

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30680
Docket No. MW-31434
95-3-93-3-423

The Third Division consisted of the regular members and in addition Referee Martin H. Malin when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(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 without notification two (2) letters of warning were placed into the personal record of Mr. G. A. Black and upon knowledge of their being cited at a disciplinary investigation held on April 9, 1992, the Carrier failed and refused to remove them from the personal record. [System File GAB-92-51 and 30 GAB-92-/12(92-916) SSY].
- (2) As a consequence of the violation referred to in Part (1) above, the letters of warning and all reference to said letters shall be removed from Mr. G. A. Black's record."

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all of 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 February 18, 1992, Carrier's Roadmaster wrote a letter to Claimant stating that Claimant had overloaded a car on February 5, 1992. On March 23, 1992, the Roadmaster wrote a letter to Claimant stating that Claimant had failed to report to a position and failed to notify the Roadmaster that he would not report on March 18, 1992. Claimant and the Organization learned of the existence of

the letters for the first time when they were cited in an investigation of a separate incident on April 9, 1992.

The Organization contends that the letters were disciplinary in nature and therefore issued without notice and an opportunity for Hearing in violation of Rule 39 of the controlling Agreement. The Organization further argues that Claimant was never notified of the letters prior to Carrier's placing them in his file and noting them on his personal record.

Carrier argues that the letters were cautionary and issued for guidance and counselling. In Carrier's view, Rule 39 does not apply because the letters did not constitute discipline.

It is clear that Carrier may provide guidance and counselling, and may caution employees without complying with the formal Rules governing discipline. On the other hand, merely calling something a letter of caution or counselling does not excuse a letter that is truly disciplinary from the need to comply with the Agreement's discipline Rule. (Compare Second Division Awards 12699, 12688, 12571, 12471, and 12488 with Second Division Awards 12307, 7588, and Third Division Awards 25389, 29583, and 29872). Each claim must be evaluated on its own facts.

The Board has reviewed the two letters at issue in the instant case. Although on their face, the letters might be read as cautionary, the undisputed fact is that the Claimant never received them. Letters cannot serve to guide or counsel if they are not provided to the employee for whose benefit they are written. Because the Claimant never received the letters, we must sustain the claim and order that they be removed from his record.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant 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 31st day of January 1995.