

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32313
Docket No. SG-32253
97-3-95-3-61**

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

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Chicago and Northwestern Transportation Company**

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Chicago & North Western Transportation Co. (CNW):

Claim on behalf of D.E. Beck for removal of a December 3, 1993 letter of reprimand from his personal record, account Carrier violated the current Signalmen's Agreement, particularly Rule 51, when it imposed discipline in the form of a reprimand without providing the Claimant with a fair and impartial investigation. Carrier's File No. 79-94-16. General Chairman's File No. S-AV-186. BRS File Case No. 9546-CNW."

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.

The dispute in this case centers around the action of a C&S Supervisor who, in a letter dated December 3, 1993, addressed to Claimant, informed him that his actions during a conference call telephone meeting were "in violation of Rule 607 in the Safety Rules and General Rules book" and that he (the Supervisor) was "issuing you this letter of reprimand." The December 3rd letter also indicated that the letter of reprimand "will be kept in your personal file."

The Organization argued that the actions of the Supervisor constituted an assessment of discipline and that such assessment of discipline without the benefit of a formal hearing was a violation of Rule 51 - INVESTIGATION AND DISCIPLINE. The Organization cited with favor the decisions set forth in Second Division Awards Nos. 11249 and 11846, as well as Third Division Award 29583, in support of their contention that the letter of reprimand as found in this case was, in fact, an assessment of discipline and not merely a letter of caution or warning or counseling.

The Carrier argued that their clearly stated DISCIPLINE POLICY is the vehicle which is applicable in this case and that the letter as written by the Supervisor was in consonance with that policy and did not constitute formal discipline nor did it violate any of the provisions of Rule 51. Carrier cited with favor Award 1 of Public Law Board No. 4817 which examined Carrier's discipline policy and found that, under the policy, "discussions and reviews, whether issued verbally or in writing, are not discipline." Carrier further called attention to Third Division Award Nos. 19713 and 20087 each of which involved these same parties but which predated the current discipline policy referenced above. The awards held that the placement of a letter of caution in the employee's personnel record was not, per se, an assessment of discipline. Carrier additionally pointed with favor to Third Division Award 24953 which also concluded that a letter of warning did not constitute formal discipline.

There is no serious disagreement relative to the basic fact situation in this case. Neither is there any serious challenge to the efficacy or intent of Carrier's DISCIPLINE POLICY. It is a clearly stated, forward-thinking statement of policy in regard to the assessment of discipline. It does not purport to supersede or negate the provisions of the negotiated Discipline Rule 51. Among other things, it contains provisions for not only the issuance of written warnings of possible future discipline, but also for an annual review of letters of warning which are issued. It generally reserves formal discipline for serious offenses or "frequent or continued minor offenses." It is a good policy and deserves

serious consideration. Award 1 of Public Law Board No. 4817 made a scholarly review of the policy and, in pertinent part, held as follows:

“Under the current system, discussions and reviews, whether issued verbally or in writing, are not considered discipline. Under this new discipline system, an employee is formally notified that he is being placed on the system only when he has repeatedly failed to follow Carrier rules and regulations and supervisors' counseling. Once he has been counseled and warned of his placement on this discipline system, and if he continues to violate rules, such violations and/or infractions are handled in accordance with the applicable schedule rules regarding discipline.”

This Board subscribes to the logic expressed in that award and upholds Carrier's right under the policy to issue letters of warning and caution even to the extent of mentioning specific rules on which the warnings and/or cautions are based.

In this case, Carrier asks that the December 3rd letter be viewed solely as a “letter of review” issued in compliance with the stated policy and did not constitute formal discipline. The Board's problem with that reasoning is found in the particular and peculiar language which was used by the Supervisor who composed and issued that letter. Not only did the Supervisor cite the rule which he felt the Claimant had violated, but also he clearly stated that Claimant had, in fact, violated that rule and issued not a letter of warning or caution that future derelictions might result in formal discipline, but rather he issued a “letter of reprimand” which he said “will be kept in your personal file” (underscore ours). He did not indicate or imply that the letter or reprimand would serve as a caution against future infractions or that it would be subject to the annual review which is clearly and carefully set forth in the policy statement. Interestingly, Second Division Award 11846 had the following to say in this regard:

“This Board has held that where such letters contain content which is primarily accusatory, with findings of fact that the employee is guilty of certain conduct, then they are in fact reprimands or discipline (Second Division Awards 7588, 9412, 10694, 11249). However, where such letters are in fact warnings for the purpose of counseling employees, they are personnel actions, rather than discipline (Second Division Awards 8062, 8531, 9522, 10836, 11683); Third Division Awards 24953, 27807, 27805).”

That logic applies equally to this fact situation.

In this case, the Board is convinced that the "letter of reprimand" was not merely a cautionary letter or a letter of warning as contemplated in the well-founded discipline policy, but rather was, in fact, an assessment of discipline which should have been handled under the requirements of Rule 51. Therefore, the claim as presented here is sustained.

AWARD

Claim sustained.

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 13th day of November 1997.