

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32937
Docket No. MW-34078
98-3-97-3-619**

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

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Consolidated Rail Corporation**

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier placed a letter of discipline in the personal record of Mr. S. Ellis without providing him the benefits or a fair and impartial hearing pursuant to Rule 27 of the Agreement (System File MW-4308).**
- (2) The Agreement was violated when the Carrier placed a letter of discipline in the personal record of each Claimant* listed below without providing them the benefits or a fair and impartial hearing pursuant to Rule 27 of the Agreement (System File MW-4340).**
- (3) The Agreement was violated when the Carrier placed a letter of discipline in the personal record of Mr. S. J. Carlson without providing him the benefits of a fair and impartial hearing pursuant to Rule 27 of the Agreement (System File MW-4323).**
- (4) As a consequence of the violations referred to in Parts (1), (2) and (3) above, each of the Claimants listed therein shall have the letter of discipline removed from their respective records.**

***K. Stone
R. Wieland
J. Gonzales**

**W. Lightfoot
C. Hill
D. Hammons**

D. Tryon
M. Allen
D. Allen
J. Ball
T. Blakeman
S. Wells
T. Dillard
D. Grow
L. Durst
B. Reed
M. Fitch
L. Peek
L. Griffith
J. Higginbotham
M. Gabel
A. Landrum
R. Thomas
D. Bays
D. Bellar

D. Wyant
J. Kellams
E. Pierson
R. Aper
B. M. Cook
N. Cushing
J. Strasell
J. Williams
G. Windler
R. Adams
R. Brenner
W. Bloomfield
D. Sanders
R. Decker
D. Davis
D. Dulin
L. Whitehead
D. Siegenthaler
R. LaBaume"

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.

This dispute involves letters that Carrier sent to each Claimant and placed in each Claimant's file. Each letter recounted Claimant's injury rate and continued:

“... Your rate of injury is substantially higher than that of employees performing service under similar conditions, and could indicate that you are ‘injury prone’.

This type of performance is unacceptable and indicates that you present a further risk of injury to yourself and others. It is imperative that you adjust your work practices in order to avoid future incidents. If your safety practices do not immediately improve and you continue to sustain personal injuries, you may be subject to disciplinary action.”

The parties disagree over whether the letters constitute discipline, thereby requiring a fair and impartial Hearing under Rule 27. It is clear that if the letters constitute discipline, Carrier violated the Agreement, but if they do not constitute discipline, no violation reoccurred.

The Board has issued numerous Awards marking the boundaries between non-disciplinary letters of caution and discipline. Particularly applicable to the instant dispute is Third Division Award 31489, involving the same parties as are before the Board in the instant dispute.

Award 31489 involved letters to two claimants which recited their attendance records and stated that further attendance problems “will not be tolerated and may subject you to disciplinary action.” This Board found no violation of the Agreement, even though the letters were issued without a Hearing and were placed in the claimants’ files. We explained:

“The letters in the instant claims did not accuse the Claimants of any specific Rules violations, nor did they find that the Claimants violated any Rules. They merely cautioned the Claimants concerning their attendance records and counselled that continued poor attendance may lead to disciplinary actions. Measured against the line drawn in the ample precedent on point, these letters are cautionary rather than disciplinary.”

Similarly, in the instant case, the letters did not accuse the Claimants of any Rules violations. They cautioned the Claimants concerning the need to improve their work practices to avoid future injuries. The letters went on to offer “any additional safety training covering any facet of your duties,” if the Claimants believed they needed such.

In light of Award 31489 and other relevant authority cited therein, we conclude that the letters were cautionary rather than disciplinary and that Carrier did not violate the Agreement in issuing them without a Hearing.

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.