PUBLIC LAW BOARD NO. 6621

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

And

UNION PACIFIC RAILROAD COMPANY

Case No. 30

Statement of Claim: It is the claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when it placed a Letter of Counsel dated September 1, 2000 in the personal record of Mr. F.E. Pena and when it failed to remove said letter from his record.

(2) As a consequence of the violation referred to in Part (1) above, the Carrier shall now remove the Letter of Counsel dated September 1, 2000 from Mr. F.E. Pena's personal record.

Background:

Claimant F. E. Pena was first hired by the Union Pacific Railroad Company (former Southern Pacific Transportation Company – Western Lines) on September 19, 1969, and he holds seniority in the Track Sub-department. It is undisputed that he has an exemplary record as a track laborer and machine operator.

On August 30, 2000, Claimant Pena was temporarily working as a crib reducer on Gang 8891 when, while removing a hydraulic spike puller from the truck, it caught on his safety vest, fell, and injured his left foot. No medical attention was necessary, and Claimant continued to perform his assignment.

Following the incident, on August 30 and 31, Manager Track Maintenance Andrew S. Gonzales met with Claimant to discuss how the accident might have been avoided. Thereafter, on September 1, 2000, Gonzales sent Claimant a Letter of Counsel which stated, in part:

* * *

> I am sure that you now realize, after reviewing the rules mentioned above [Safety Rule 70.1 and General Responsibilities Rule 1.1.2], and our discussions that the incident could have been and should have been prevented. You stated to me that you will work safer and in the future you will put an increased emphasis on job briefing and planning. I am confident that with your renewed commitment to the safety process and your 31 years of experience that you can finish your career without another incident! (Employee's Ex. A-2)

On December 1, 2000, the Organization filed a claim on behalf of Mr. Pena, requesting that the Letter of Counsel be removed from Claimant's personal record. The claim was properly processed, and the parties discussed the case in conference on August 30, 2001. However, the parties were unsuccessful in resolving the claim, which is now before this Board for determination.

Contentions of the Parties

The Organization contends that Mr. Gonzales' letter of September 1, 2000 was not simply a Letter of Counsel, but rather, was a letter of discipline. Moreover, on September 6, 2000, MTM Gonzales intimated to Claimant that the letter would be used in assessing future discipline. In the Organization's view, Gonzales subjected Claimant to humiliating treatment, and unless the offensive letter is removed from all of the Claimant's records, it will be held over his head "like the sword of Damocles." (BMWE Ex Parte Submission to Third Division , NRAB, p. 7).

The Carrier contends that the Letter of September 1, 2000 was, in fact, a Letter of Counsel, which was not meant to harass Claimant in any way. MTM Gonzales merely wanted to remind Claimant of the safety rules and the need to maintain safe working habits. The Carrier further submits that Letters of Counsel are not discipline, and they do not blemish an employee's record. In support of its position, the Carrier provided Claimant and the Organization with copies of Claimant's discipline record, work history, and miscellaneous events screen, all of which reflected that there was "no discipline on file" as a result of the August 30, 2000 incident.

Opinion

It is undisputed that Claimant was never charged with a violation of a Carrier rule, and there was no disciplinary hearing. The only thing that occurred was that after the incident of August 30, 2000, MTM Gonzalez met with Claimant to review what happened and to discuss ways to prevent such accidents in the future. Clearly, the Carrier has an obligation to protect its employees, and it was within its rights in reminding Claimant of its safety rules. The Letter of Counsel was simply an effort to encourage safe work habits. The evidence does not support the Organization's contention that the Letter was intended to intimidate or humiliate Claimant.

Moreover, the rules cited by the Organization do not support its claim. The Organization asserted that the Carrier violated Rule 1 (the Scope Rule), Rule 2 (listing the Sub-Departments), Rule 3 (addressing the Classes), and Rule 44 (setting forth the Claims and Grievance Process). The Organization, while citing these rules, failed to identify how they were violated by the Carrier's issuance of a Letter of Counsel. The

Collective Bargaining Agreement does not prohibit the Carrier from counseling employees and from memorializing such counseling sessions in written letters.

A Letter of Counsel is not intended to punish an employee. Rather, its purpose is to remind the employee of the proper way to conduct himself and to review applicable rules or procedures. Many arbitration awards have held that Letters of Counsel are not discipline. See, for example, *Second Division Award No. 12699 (John F. Hennecke)* and *Second Division Award No. 12471 (Hugh Duffy).*

It is undisputed that Claimant is a long-term employee with an excellent work record. There is no reason to believe that this record has in any way been blemished by the Letter of Counsel. A review of the evidence reveals that there is "No Discipline' in Claimant's discipline file. Similarly, there is no mention of the Letter of Counsel in Claimant's Work History and Miscellaneous Events History.

Essentially, the Organization has asked the Carrier to rescind discipline when none, in fact, was imposed. Nor was any provision of the Collective Bargaining Agreement violated. Therefore, the claim must be denied.

Award

The claim is denied.

Joan Parker
Neutral Member

Carrier Member

Dated: 6-10-04

Organization Member

Dated 6-10-04