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PUBLIC LAW BOARD NO. 2439

OFFICE OF GENERAL CHAIRMAN

Award No. 11
Case No. 11

PARTIES Southern Pacific Transportation Company (Pacific Lines)
TO and
DISPUTE Brotherhood of Maintenance of Way Employees

STATEMENT
OF CLAIM

- "1. That the Carrier violated the provisions of the Agreement when it improperly assessed Claimant R.A. Tena's personal record with a letter of reprimand without first according Claimant a fair and impartial hearing, said action being in abuse of discretion.
2. That the Carrier now remove the letter of reprimand from Claimant's personal record."

FINDINGS

Upon the whole record, after hearing, the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

The record indicates that on March 29, 1978, Claimant was instructed to mount a railroad flatcar for purposes of securing a piece of track equipment. Claimant followed the instructions while the equipment, a crane, was still being positioned on the flatcar. Because of his premature mounting of the car when it was unsafe to do so, he was forced to jump from the car to avoid serious injury. In the course of his jumping he allegedly injured an arm and leg causing him to lose five days of work.

Subsequently on May 1, 1978 Claimant received the following letter which was placed in his personal file:

"With reference to your personal injury sustained on March 29, 1978 wherein you bruised your arm and leg.

Informal investigation of your injury sustained on March 29, 1978 wherein you jumped from the burro crane flatcar and fell causing injury to leg and arm, revealed that you may have performed an unsafe act which was responsible for your accident. The unsafe act was your boarding the flatcar before the burro

crane had completed its move. This act placed you in a hazardous position and, therefore, there was no place for you to go when the accident occurred except jump from the car. In the future please understand that you are not to board this type of rail equipment until it is safe for you to do so.

This is a formal letter of instruction to be entered on your personal record."

Carrier maintains that the letter in question was a letter of instruction thus precluding its use in a disciplinary fashion: It was not a letter of reprimand. Furthermore, Carrier states that the letter was placed on Claimant's record under the section entitled "Cautions, Education Talks, Garnishments, Etc." and not under the section referring to discipline. Carrier argues that the letter was a letter of instruction and did not warrant a formal hearing. In addition, Carrier pointed out that Claimant needed counseling in his work practices with respect to safety based on his prior history. Carrier concludes that its action in this matter was proper and was, in fact, a lenient handling of the situation and was not in violation of the Rules.

Petitioner's position is first that had Claimant not jumped clear of the flatcar, serious injuries could have occurred. Nevertheless, Claimant followed the instructions of his supervisor with respect to the particular operation. Petitioner argues that the letter of May 1, 1978 makes reference to an informal investigation and yet, there is no indication that either Claimant or his representatives were permitted to be present at such an investigation and there is no record of what transpired during that informal investigation. Further, Claimant takes the position that if this was merely a letter of instruction, there was no basis for placing it in his personal record.

One critical comment made by Carrier in its submission, in this case, deserves repetition:

"Carrier for obvious reasons, is entitled to keep such records establishing that employes have been counseled in matters which in their future could result in a formal hearing in the assessment of discipline."

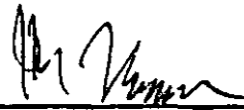
While the Board respects the obligation to promote safety among its employees, and intends to counsel them on subjects of safety and other matters, there is some question about its actions in this instance. While counseling may be in order the preparation and inclusion of the letter of "instruction" in the personal record of Claimant raises some question. This is particularly true in view of the comment made by Carrier quoted above. If future activities could result in the assessment of discipline and a letter of instruction such as this could be used as part of the justification for the imposition of a particular measure of discipline, then it follows that the letter was improperly placed in Claimant's file, if there was no investigation or other participation prior to its issuance. For this reason, the claim will be sustained.

AWARD

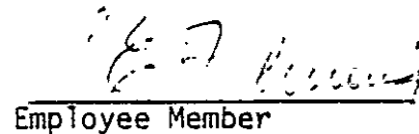
Claim sustained.

ORDER

Carrier will comply with the Award herein within thirty (30) days from the date hereof.



I.M. Lieberman, Neutral-Chairman


Carrier Member
Employee Member

San Francisco, California

3-11, 1980