

PUBLIC LAW BOARD NO. 6149

PARTIES TO DISPUTE: Brotherhood of Locomotive Engineers
Union Pacific Railroad Company

STATEMENT OF CLAIM: Claim of Engineer R. M. Nettiello for removal of
Letter of Counsel issued by Manager of Operating Practices, W. B. Rowe dated December 5,
1996.

FINDINGS:

The Board, upon consideration of the entire record and all the evidence, finds that the parties are Carrier and Employee within the meaning of the Railway Labor Act, as amended, and that the Board has jurisdiction over the dispute involved herein.

On December 5, 1996, the Carrier's Manager Operating Practices sent Claimant the following "Letter of Counsel":

"This letter will confirm our conversation at approximately 5:00PM, December 4, 1996, while you were assigned as engineer on Train #47, Job 7312.

"When requested, you were unable to produce a valid certificate of Operating Rules examination card. This document is required under the instructions contained in Item #7, Page 139 of the current System Timetable.

"I am providing you with another copy of this document which must be in your possession whenever on duty. Please see that in the future you have all the documents required in Item #7."

On January 16, 1997, the Organization wrote to the Carrier taking exception to the letter on the basis that "Letters of Counsel" are not referred to in Carrier's Upgrade Discipline Policy as a means of documenting discipline. The Organization contended that due to the progressive nature of the Discipline System, the letter served as formal discipline

assessed outside the scope of the Upgrade Discipline Policy and applicable collective bargaining agreements.

The Carrier responded that "a letter of counsel is just another form of communicating with an employee to stress the need for compliance with Operating Rules. It does not constitute discipline." The Carrier also noted that the letter of counsel had not become a part of Claimant's discipline record.

For this Board's purposes, the System Agreement - Discipline Rule provides, in pertinent part, as follows - -

2. Locomotive engineers will not be disciplined without first being given a fair and impartial investigation except as provided below * * * *
3. * * * * The notice will propose discipline to be assessed if investigation is waived and designate a carrier officer who may be contacted for the purpose of arranging for an informal conference on the matter * * * *

The Carrier's Upgrade Policy, which became effective July 1, 1994, is extremely detailed. For our purposes, it states - -

All collective bargaining agreements apply;

and

Manager are encouraged to verbally counsel
Employees, when appropriate.

The Policy provides for the assessment of five levels of discipline, depending upon the seriousness of the infraction, with Level 1 (Letter of Reprimand) being the least severe of the five.

Essentially, the Organization argues that the Policy provides for verbal counsel-

ing of the employee and that a Letter of Counsel exceeds the provisions of the Policy. A Letter of Counsel, according to the Organization, is a form of discipline and in support of its position the Organization cites Third Division Award Nos. 26382 and 26383 (Zusman) and Award No. 79 of Special Board of Adjustment No. 955 (Brown).

The Carrier maintains that a Letter of Counsel is simply a means of communication.

Thus, the question before the Board is whether or not the Letter of Counsel which was sent to Claimant can be construed as discipline, administered without investigation or the opportunity to waive investigation as provided for in the Discipline Rule.

It is clear that the Carrier's "Upgrade Policy" evolved from much time, thought and consideration. It is detailed in every respect and easily causes one to conclude that the Carrier has made every effort to leave nothing to the imagination. Its determination to achieve an effective and workable Policy with an objective of corrective action and training, rather than punitive discipline, is illustrated by the fact that the Carrier first tested the Policy in a pilot project before implementing it system-wide.

Given the Carrier's attention to detail in formulating the Policy, the Board necessarily notes that the Policy provides for verbal counseling, but it does not provide for letters of counsel which are placed in the employee's file. Therefore, it must be determined whether or not the Letter of Counsel sent to Claimant can be construed as discipline which was not assessed in accordance with the provisions of the Discipline Rule, and the Board has concluded that it can be considered as such.

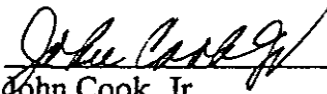
It should be noted that the Board's observations are in keeping with those advanced by Award No. 79 of Special Board of Adjustment No. 955 (David H. Brown) which provides, in part, as follows - -

Irrespective of repeated disclaimers, such cards and letters are patently intended to serve the purpose of discipline. Such being the case, they violate the negotiated agreement between the parties unless supported by a formal investigation or consented to by the disciplined employee."

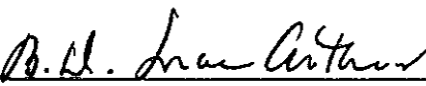
In reaching this decision, the Board cautions that it is not the Board's intention to abridge the Carrier's right to confer or communicate, either verbally or in writing, with its employees concerning specific incidents or questions of performance.

AWARD: The claim is sustained.

ORDER: The Carrier is directed to comply with this Award within 30 days of the date hereof.


John Cook, Jr.
Chairman and Neutral Member


D. V. Gonzales
Carrier Member


B. D. MacArthur
Employee Member

Dated at Portland, Oregon this 18th day of September, 1998.