

NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISIONAward No. 24358
Docket No. 43992
94-1-93-1-U-1716

The First Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

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

STATEMENT OF CLAIM:

"Claims of Engineers D. C. Stuart and M. D. Jones to have their records cleared of any notation of counseling sessions with the Carrier in regard to their personal injuries." BLE Case Nos. D-177 & D-203 Carrier Files 9200772 & 9204008

FINDINGS:

The First 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 waived right of appearance at hearing thereon.

This dispute involves protests of personal record notations confirming "Personal Safety Conferences" by Carrier Supervisors with two Claimants, on November 11, 1991, and July 7, 1992, respectively. The claims were combined into one case as the facts and issues in both disputes are similar.

Each of the Claimants was called to a "Personal Safety Conference" to review the employee's personal safety record. In the notice of the meeting, Claimants were apprised that: "Based on your length of service your personal safety record is not consistent with those of your fellow employees."

Claimant Stuart attended the scheduled conference on November 11, 1991, in connection with a "review of most recent injury", sustained on October 19, 1991. Claimant's Local Chairman accompanied her, and she was compensated appropriately. While Carrier maintained that Claimant did not receive a follow-up letter, Organization asserted that Carrier placed "a letter" in Claimant's personal file. The record indicates that a "notation" of the conference was placed in the file along with a copy of the notice to attend.

On July 7, 1992, Claimant Jones received a letter from Carrier's Manager Operating Practices confirming a Personal Safety Conference which he had conducted with the Claimant. In that letter, it was "confirmed" that Claimant's personal injury record had been discussed. Further, it was "discussed" how he could "avoid" being injured in the future. Apparently, that "letter" was not placed in Claimant's personal file, however, the Manager "retained" a copy of the letter in his office.

Claimants' respective Local Chairmen protested the Safety Conferences, contending Carrier had violated Article 44-"Discipline Appeal And Representation." The Organization asserted that Carrier's "discipline" was an "improper intimidation device to chill an employee's rights to file an injury report as well as a claim under the Federal Employers Liability Act." The Organization seeks removal from Claimants' personal records of "any record of the injury investigations." Organization asserted that Claimants had been treated "differently" than other employees.

Carrier denied the appeals, maintaining that Personal Injury Conferences and the like, and the confirmation of such conferences, are counseling tools and not discipline. There is never any discipline issued, nor Investigation held. Carrier submitted that Claimants were merely counseled about their personal injury record because of Carrier's "concern for their safety and the safety of others."

The Board is not unreceptive to the notion that under certain circumstances an Carrier might engage in disciplinary action under the guise of "counseling" an employee. We have reviewed the record in this case, however, and cannot find any evidence that Carrier violated the Discipline Rule of the Agreement by conducting the personal safety conferences or by noting the occurrence of those conferences in the Claimants' personal record. This Board has held that safety record review and counseling on safer work habits do not necessarily constitute disciplinary action. See Second Division Award 8062. In Second Division Award 8531, the Board held further that record notations to confirm such counseling do not convert the counseling to disciplinary action. The same rationale obviously underlays First Division Award 24168. We conclude that the counseling notations involved in the present Claim are in the same category as those dealt with in the cited Awards and are readily distinguishable from the "contractually improper letters" invalidated by the Board in First Division Awards 24168 and 24169.

AWARD

Claims 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 First Division

Dated at Chicago, Illinois, this 16th day of September 1994.