

The Second Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

(Brotherhood Railway Carmen/Division of TCU
PARTIES TO DISPUTE: (
(Fruit Growers Express Company

STATEMENT OF CLAIM:

1. That the Fruit Growers Express Company violated the controlling Agreement, in particular Rules 25 and 35, when the Foreman, J. S. Albritton, took engine parts out of the vat, steam cleaned the parts, washed the engine parts and carried the parts inside to the mechanic.

2. That accordingly, the Fruit Growers Express Company be ordered to compensate Earl Ray for five (5) hours straight time pay.

FINDINGS:

The Second Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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.

On April 24, 1986, a Foreman in Carrier's Jacksonville shops was observed by the Claimant and four other employees spending a considerable portion of his day cleaning parts and carrying them to a mechanic. The Organization claims that he was doing production work and filed a claim on the matter. The Carrier claims that the Foreman was using newly installed equipment and a new cleaning solution which required him to inspect, assist, demonstrate and instruct employees in its proper use, which is not only permitted by the Agreement but is important to its efficient operation. To effectively demonstrate the process it was necessary for him to have some hands on activity.

The Organization filed a written claim with Carrier's Shop Superintendent. The Superintendent's denial raised a procedural point as well as making a denial of the claim on its merits. He contended that the claim was not properly handled because it had not been discussed with the Claimant's immediate supervisor prior to the filing of a written grievance at the Superintendent's level. Such a discussion was required by a letter of understanding reached between the Carrier and the Organization on September 5, 1978.

The Organization rejected the Superintendent's denial and in the letter of rejection stated that the Foreman had been spoken to on several occasions concerning his performance of Carmen's work. The Organization, however, does not specifically state that this Claim was discussed with the Foreman. On appeal on the property and before this Board both parties deal with the merits of the matter as well as Carrier's procedural objection.

On September 5, 1978, the Carrier drafted a Letter Agreement, which was concurred in by the Organization on September 11, 1978, stating in part:

"Fruit Growers Express Company is willing to make the changes which you requested, i.e., initial appeal is to be made to employee's immediate supervisor. Should the employee making the appeal fail to obtain satisfaction with his immediate supervisor, then a direct appeal may be made to the shop superintendent in writing through the Local Employees Committee."
(Underlining added.)

An uncomplicated reading of this provision indicates that initially the Organization must at least discuss a specific claim or grievance with, in this instance the Foreman, and if satisfaction is not obtained, it may direct a written appeal to the Shop Superintendent. We have no evidence that the above procedure has been revised or altered by the parties.

The Organization argues that the claim was filed with Carrier's Shop Superintendent, who is designated as the first officer to receive written claims by Carrier's letter of January 28, 1986. We cannot read anything into the January 28, 1986 letter which alters the understanding expressed in the earlier Letter Agreement. The stated purpose of the January 28, 1986 letter is to notify the General Chairman of the "order of written appeals for grievances." It does not, in our judgment, alter the specific requirement of the September 11, 1978 Letter Agreement that "initial appeal be made to the employee's immediate supervisor."

In Third Division Award 27292 we stated:

"This Board is loathe to dispose of Claims on overly technical grounds, but Carrier is within its rights to insist upon compliance with the procedural niceties of the Agreement."

In this matter Carrier insisted from the time of initial written filing that the claim was procedurally defective because it was not first discussed with the employee's immediate supervisor. The contention of the Organization that it had discussed, on occasion, problems with the supervisor concerning his performance of work it believed should be done by Carmen does not satisfy a clearly expressed agreement requirement that a specific claim be handled with the employee's supervisor before being submitted in writing to the Shop Superintendent.

Accordingly we must dispose of this matter on procedural grounds without consideration of the merits of the matter. The Claim must be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 1st day of March 1989.