

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 14090
Docket No. 13969
14-2-NRAB-00002-130020**

The Second Division consisted of the regular members and in addition Referee Joseph M. Fagnani when award was rendered.

**(Gary Svoboda
PARTIES TO DISPUTE: (
(BNSF Railway Company**

STATEMENT OF CLAIM:

“Of the improper practice of denying a request of an employee to use his contractual Leave of Absence Rule 16(b) for sickness, under the Agreement between BNSF Railway Company and its Employees represented by the Brotherhood Railway Carmen, Division of TCU. Which this rule 16(b) cites ‘may be handled as unjust treatment under these rules.’”

FINDINGS:

The Second 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 were given due notice of hearing thereon.

The Petitioner was employed as a Carman at the Carrier’s Havelock Shop in Lincoln, Nebraska, with a Monday to Friday workweek. On Friday, January 4, 2013, the Claimant submitted a written request to the General Car Foreman for a formal leave of absence under Rule 16 of the controlling Agreement. The Petitioner noted that (1) he had been sick over the holidays (2) this “cold or whatever I have seems to be getting worse and not better” and (3) he “needed extra bed rest of an undetermined

period” to complete his recovery. The Petitioner was thereafter off sick on Monday and Tuesday, January 7 and 8, 2013. When he returned to work on January 9, 2013, the Petitioner presented the General Foreman a note from his doctor attesting to the Petitioner’s inability to work. While the General Foreman did not refuse the Petitioner’s request for permission to be off work, he never acceded to the Petitioner’s request for a formal leave of absence under Rule 16. The two days that the Petitioner did not work were considered as incidents under the Carrier’s Attendance Guideline system.

Thereafter, the Petitioner submitted a claim protesting the Carrier’s refusal to grant him a formal leave of absence. The claim was progressed up to and including the General Director-Labor Relations, the highest officer of the Carrier designated to handle such disputes on the property. By letter dated July 9, 2013, the General Director denied the Petitioner’s appeal. The Petitioner responded by letter dated July 26, 2013, stating that he disagreed with the denial and therein informed the Carrier of his “intent to list notice of intent to file this Grievance for Arbitration with the NRAB Second Division.”

By letter dated August 6, 2013, the General Director advised the Petitioner that under the provisions of Section 3, First (i) of the Railway Labor Act, he was required to have an on-property conference prior to referral of his claim to the NRAB. The Petitioner was given contact information so as to enable him to make the necessary arrangements for a conference.

By letter dated August 18, 2013, the Petitioner filed a Notice of Intent with the Second Division of the Board in connection with the matter set forth in the “Statement of Claim” quoted above. The Petitioner attached to his notice a letter to the Carrier contending that the conference requirement was only a “gentlemen’s agreement and is not mandated as a requirement prior to referral to the NRAB.” The Petitioner also stated that an on-property conference “would be just a waste of both our time” unless the Carrier wished to concede that Rule 16 had been violated.

Whatever the Petitioner’s position relative to Rule 16, the Board finds that a conference was never held on the property. The lack of conference was fatal to the Petitioner’s claim. Section 2, Second of the Railway Labor Act states:

“All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute.” (Emphasis added)

The Petitioner was fully informed that not only was the Carrier willing to conference his claim, he was told that he was statutorily required to handle his claim in the usual and customary manner on the property before advancing it to the Board. Despite this advice, the Petitioner opted to present this dispute to the Board without first having a conference on the property and, in so doing, he failed to comply with not only the Railway Labor Act, but also Circular No. 1, which sets forth the rules of procedure for the Board. The Petitioner’s contention that the conference requirement was not mandatory was mistaken. Furthermore, the fact that the Petitioner may have thought such conference futile did not relieve him of his obligation to conference the claim. (See Second Division Award 13399 and Third Division Award 14873, both of which are illustrative of the plethora of Awards on this issue.)

Accordingly, the Board has no choice but to dismiss the claim for the reason that the dispute was not handled in accordance with the provisions of the Railway Labor Act and Circular No. 1 of the Board.

AWARD

Claim dismissed.

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 Second Division**

Dated at Chicago, Illinois, this 25th day of November 2014.