

The Second Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

(Brotherhood Railway Carmen of the United States
(and Canada
Parties to Dispute: (
(Missouri Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Missouri Pacific Railroad Company violated Rule 16 of the controlling Agreement when their General Foreman G. N. Lofton posted notice dated June 17, 1983, File 136, changing the manner in which Carmen were to lay off.

2. That accordingly, the Missouri Pacific Railroad Company be ordered to rescind the notice of June 17, 1983 and their supervisors be informed to comply with the provisions of the Agreement.

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 June 17, 1983, the General Car Foreman posted a notice to all Carmen which read as follows:

"ALL CARMEN

Effective immediately, all laying off or requests for personal days will be handled through this office or with the General Foreman on duty. If you are unable to contact your General Foreman or this office, it will be permissible to contact the North End Console Foreman at 373-2386. Requests for laying off or personal days will not be accepted unless handled as outlined above."

The Organization argued on property that the above posted notice constituted a violation of Rule 16 of the Agreement in that it requested a change in past practice at North Little Rock where layoff requests had been handled through the Car Foreman or Locomotive Foreman. Under the above posted notice such authority was removed and transferred to the General Car Foreman or General Foreman on duty. For employees who requested a layoff, such requests went beyond Rule 16 in that the Supervisor was no longer the Foreman that the Carmen worked under as required by the Rule which states:

"Rule 16. ABSENCE FROM WORK WITHOUT LEAVE

Employes shall not lay off without first obtaining permission from their supervisor to do so, except in cases of sickness or other good cause of which the supervisor shall be promptly advised."

The Organization maintains that said notice changes the Agreement without proper notice and therefore requests this Board to rescind the notice as violative of the Agreement.

The Carrier denied on property that the notice was either new or in violation of the Agreement. The Mechanical Superintendent's letter pointed out that such "instructions have been in effect for years, and have been reissued from time to time. . . ". He disputed any violation of the intent of the Rule noting that the "general foreman is a supervisor of shop crafts." It is the Carrier's position that the instructions are not new, do not violate the Rule in that the reporting is to a Supervisor and in no way alters the intent of the Rule by placing any particular burden upon the employes.

In the instant case the language of Rule 16 modifying "Supervisor" uses "their" and "the" which designate a Supervisor with authority over the Carmen. There is nothing in the rule to specify or directly identify which Supervisor employees should contact for permission. Although the Organization claims that past practice on the property has been to contact the immediate Supervisor, it has presented no probative evidence to substantiate its position which is denied by the Carrier. In the absence of such factual evidence and within the language of the Rule, the Claim cannot be sustained.

In addition this Board takes note the case at bar requests a declaratory judgment. No Claimants are named and there is herein no request for monetary reimbursement for any Agreement violation. Instead, this Board is being asked to provide injunctive relief which under the Railway Labor Act it has no authority to grant. Lacking evidence of past practice, clear contract language violation, and the authority to grant injunctive relief, the Claim must be denied (Second Division Awards 10708, 6160, 4264).

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 28th day of January 1987.