

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 11142
Docket No. 11151
2-C&NW-CM-'87

The Second Division consisted of the regular members and in addition Referee Ronald Nelson when award was rendered.

(Brotherhood Railway Carmen of the United States
(and Canada

Parties to Dispute: (

(Chicago and Northwestern Transportation Company

Dispute: Claim of Employees:

1. The Chicago & North Western Transportation Company violated the controlling agreement, the Railway Labor Act, and the rights of Carmen employed at Des Moines, Iowa, when it posted attendance policy on October 7, 1984, dated April 23, 1983 by General Car Foreman J. W. Jones, Des Moines, Iowa, on behalf of Assistant Division Manager Mechanical, D. L. Schmidt, Central Division.

2. That the Chicago & North Western Transportation Company be ordered to rescind the aforementioned attendance policy and also that letters of reprimand given under this policy to Carman R. L. Rainey on June 14, 1984 and Carman S. R. Keahna on August 8, 1984, as well as Discipline Notice No. M-85 dated August 13, 1984 given to Carman R. L. Rainey, be removed from their files in accordance with the controlling agreement, specifically Rules 25, 26, and 32.

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 employees 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.

The record as submitted by the parties shows a claim (a) that an attendance policy, dated April 23, 1983, posted for the first time on the property by the Carrier on October 7, 1984, was allegedly a unilateral attempt by the Carrier to modify Rules 25, 26, and 32 of the Agreement, effective July 1, 1984, between the parties; and (b) a letter of reprimand and discipline notice (dated 6/14/84 and 8/13/84 respectively) given to Carmen R. L. Rainey, and a similar letter of reprimand given to Carman S. R. Keahna (dated 8/08/84) were improper and must be rescinded, and removed from the employees' file.

The Organization initiated its protest on October 22, 1984, with an appropriate officer of the Carrier. Subsequent thereto, the dispute was properly handled on the property by the Organization and the Carrier.

On July 24, 1985, the Carrier issued a new discipline policy which superseded the policy posted by the Carrier on October 7, 1984.

The first issue in this dispute, the propriety of the October, 1984, policy has been the subject of another dispute between the same parties, where this Board in a very cogent opinion set out parameters to be observed by the Carrier in these circumstances. See Award No. 9711. Inasmuch as the Carrier issued a policy on July 24, 1985, superseding the October, 1984, policy, that portion of the Organization's Claim regarding the propriety of the October, 1984, policy needs no further consideration by this Board. This Board has not been asked to review the Carrier's 1985 policy as a part of this proceeding.

Concerning the discipline assessed Carman Rainey, the record reflects that the matter was resolved by the parties on the property on June 19, 1985, and needs no further comment by this Board.

With regard to the letters of reprimand contained in the files of Carman Rainey and Carman Keahna, the letters were issued on 6/14/84 and 8/08/84 respectively. The Organization's claim for adjustment of the issuance of these letters was dated October 22, 1984, 130 days after the letter was placed in Rainey's file and 75 days after the letter was placed in Keahna's file. Rule 29 of the Controlling Agreement contains, in part, a 60 day appeal period which was not complied with by the Organization. Such time limits are jurisdictional in nature barring extraordinary circumstances which are not alleged in this proceeding.

The Board feels compelled to point out that the issue of whether the letters placed in the files of Carmen Rainey and Keahna constitute disciplinary action, see Award No. 8062, cannot be decided because the Submissions by the parties does not contain copies of said documents.

Upon careful consideration of the record, and for the reasons contained herein, the Board denies the Organization's Claim.

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.