

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: (
(Fruit Growers Express Company

STATEMENT OF CLAIM:

1. That the Fruit Growers Express Company violated the controlling Agreement, specifically the December 11, 1981 Mediation Agreement, Case A-10798, Article X, Sections 1 and 2, when the employes at Jacksonville, Florida were not allowed to take their personal leave day or days before they were furloughed on February 7, 1986.

2. That the Fruit Growers Express Company be ordered to pay the claimants listed in the Employes' Statement of Facts their personal leave day or days.

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.

By Bulletin dated February 3, 1986, the Carrier notified twenty-four employes that due to declining business they would be furloughed at the end of their workday, February 7, 1986. By letter dated February 6, 1986, the Local Chairman filed claim on behalf of those employes alleging violation of the Mediation Agreement Case A-10798 with respect to Article X in that Carrier denied said employes their requested personal leave days for February 6 and 7, 1986.

The Organization claims that the personal leaves were consistent with the Agreement. They were requested 48 hours in advance from the proper Carrier Officer. It is the Organization's position that there was insufficient Carrier business as evidenced by the furlough to deny the requested personal leave days on the last two days before the furlough took effect.

The Carrier denied the personal leave days because "regular maintenance and program work required their presence...." In further correspondence on the property, the Carrier denied any Agreement violation as the employees were needed for service on the dates they requested.

The Agreement provision herein disputed states in pertinent part:

Section 2

"(a) Personal leave days provided in Section 1 may be taken upon 48 hours' advance notice from the employee to the proper carrier officer provided, however, such days may be taken only when consistent with the requirements of the carrier's service...." (emphasis added).

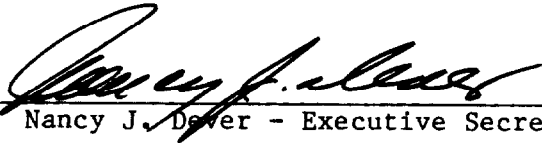
In the instant case, the Organization has not met its burden of proof. It has failed to provide probative evidence that the Carrier's actions were inconsistent with the requirements of service. The Agreement clearly states that the requirements of service may override the employees requested personal leave days. The only support provided by the Organization for this Claim is that of the impending furlough. That is not evidence by which this Board could conclude that the Carrier did not need the eighteen employees on the dates in dispute. (See Second Division Awards 4140, 2181).

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 31st day of August 1988.