

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISIONAward No. 12621  
Docket No. 12512  
93-2-92-2-37

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

PARTIES TO DISPUTE: (Brotherhood Railway Carmen/Division TCU  
(  
(Missouri Pacific Railroad Company

STATEMENT OF CLAIM:

- "1. That the Missouri Pacific Railroad Company violated Rule 31 of the September 1, 1981 Agreement when they arbitrarily, capriciously and unjustly assessed Carman W. B. Denton thirty (30) days deferred suspension effective October 29, 1990.
2. That the Carrier be directed to reverse their decision and remove the thirty (30) days deferred suspension from the personnel records of Carman W. B. Denton."

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 employe 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 Claimant was scheduled to begin his work assignment with the Carrier at 11:00 p.m. on September 27, 1990. He testified at the Investigation that he called his foreman at approximately 10:35 p.m. to tell him that he would be late because the church activity in which he was participating would not be finished in time to report to work at 11:00 p.m. While the evidence is not clear as to the specific comments of the foreman to the Claimant, it does show that the Claimant was told to report to work as quickly as possible.

The Organization, in essence, argues that the Claimant had permission to be late when reporting for work because he called his supervisor who told him in effect to come to work as soon as he could.

The Board finds that certain irrelevant elements and factors have been included in this case which tends to obfuscate the key questions and issues. However, Rule 16 of the Agreement, on which the Organization mainly rests its position, states:

"Rule 16. ABSENCE FROM WORK WITHOUT LEAVE

Employees 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."

We agree with the Carrier's construction of Rule 16 that mere notification that one will be late in reporting for work is not the same as "obtaining permission" for an absence. Moreover, notification to a supervisor does not imply that the Carrier has given up the basic right to require that employees report for work on time on a regular basis.

The claim before the Board concerns the charge that the Claimant failed to protect his assignment, because he reported to work 50 minutes late. The evidence shows that he did call his Supervisor before the beginning of his shift. While, as noted earlier, merely calling the Carrier does not provide proper authority to be absent, we find here a fine distinction given all the circumstances. The employee did call his Supervisor before the beginning of his shift to notify him that he would be late. Given this particular employee's attendance problems, some form of notice by the Supervisor that the absence would not be approved was in order.

Under the particular circumstances, the Claimant reasonably could assume that he had permission to "report as soon as possible." We also note that when he did report for work nothing was said to him at that time that his absence lacked the necessary approval.

In summary, while it is apparent from the record developed on the property that the Carrier had cause for concern with the Claimant's work attendance record, the Carrier's action in the case before us was not reasonable under the particular circumstances.

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Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: Catherine Loughrin  
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 1st day of December 1993.