

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41404
Docket No. SG-40899
12-3-NRAB-00003-090214**

The Third Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Union Pacific Railroad Company)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific (UP):

Claim on behalf of P. R. Moore, for Carrier to reestablish the updated call list that was mutually agreed to on November 19, 2007, account Carrier violated the current Signalmen’s Agreement, particularly Rule 16, when it failed to implement the updated call list per the Agreement. Carrier compounded the initial violation by failing to respond to the Organization’s appeal of this Claim within the time limit provisions of Rule 69. Carrier’s File No. 1493535. General Chairman’s File No. UPGCW-16-1518. BRS File Case No. 14143-UP.”

FINDINGS:

The Third 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.

This claim protests the failure of the Carrier to implement allegedly agreed upon changes negotiated by the Local Chairman, the Claimant herein, and two different Managers, to the call lists previously in place on their territories. It relies upon the following Agreement language to support the claim:

“RULE 16 - SUBJECT TO CALL

* * *

Note 2: The Local Chairmen and Local Management may agree to establish lists or other means in which to determine which employees are to be called under this rule, subject to review by the General Chairman and Labor Relations.”

The Organization argues that Carrier Managers Clark and Johnson met with the Claimant in his capacity as Local Chairman to update the existing call lists and agreed to make the negotiated changes, but reneged after discussing the matter with Labor Relations. It asserts that Rule 16 makes clear an intention to establish and utilize call lists, and that the Carrier is not free to refuse to implement changes agreed to in negotiations which would not create any operational hardship and would avoid overtime claims. The Organization also raises a contention that the Carrier failed to comply with Rule 69 in belatedly delivering its denial to the appeal at the claims conference.

The Carrier initially contends that Moore is an improper Claimant, because he was acting in his capacity as Local Chairman when negotiating with Local Managers, and there has been no showing that he was harmed or is entitled to any compensation merely because he was unable to secure the desired result of his negotiations. It next argues that the language of Rule 16 - “may agree to establish” - does not mandate the Carrier to maintain call lists, even if they were previously established. It points out that its appeal denial was timely mailed to the former General Chairman, and that it cannot control whether he chooses to forward it to the local parties. Finally, the Carrier asserts that the Organization failed to sustain

its burden of proving a violation of the Agreement or that the Claimant is entitled to any remedy.

A careful review of the record convinces the Board that the Organization has not met its burden of establishing a violation of the Agreement in this case. Initially the Board notes that the claim appears to seek injunctive relief, and implicitly requests the Board to order the reestablishment of an updated call list never put into effect by the parties. This is an inappropriate remedy, and the Organization failed to show how the Claimant was harmed in this case. Additionally, the language of Rule 16, and specifically Note 2, supports the Carrier's position that the establishment and maintenance of call lists is not mandatory, and that it is within the Carrier's prerogative to determine that it does not wish to establish or utilize a call list on a given territory, which it apparently did in this case after the review by Labor Relations contemplated by Note 2. Regardless of whether the Organization believes that the changes requested were operationally sound, it failed to show that the Carrier's ultimate decision not to go forward with either changing or maintaining these call lists was a violation of Rule 16 of the Agreement.

AWARD

Claim denied.

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 Third Division

Dated at Chicago, Illinois, this 25th day of July 2012.