

**PUBLIC LAW BOARD NO. 5418**

**Case No. 81**

**Award No. 81**

**PARTIES**

**To**

**DISPUTE:**

Brotherhood of Maintenance of Way Employees

-and-

Springfield Terminal Railway Company

The record shows the parties were unable to agree on a "Joint Question" to the Board and therefore separately submitted the following:

**ORGANIZATION'S QUESTION:**

- (a) Did the Carrier violate the clear and unambiguous language of the newly implemented Article 16 when it failed to allow BMWED members to take an additional Personal Day upon proper advance request.

If the answer to this question is YES then what should the remedy be?

- b) Any BMWED member that has already been denied the right to take his additional Personal Day shall immediately be allowed the choice of either taking the day that was denied upon sufficient advance request or be paid a days pay in lieu thereof. Additionally, all other BMWED members entitled to an extra Personal Day will immediately be allowed to schedule such day upon sufficient advance notice.

**CARRIER'S QUESTION:**

Article 16.1 describes the quantity of Personal Leave Days that an employee is entitled to, based on his years of service with the Carrier. Article 16.2 describes the type of prior notice that an employee is required to provide to the Carrier, when requesting permission to take Personal Leave Day. Article 16.3 describes the time frame in which the particular amount of Personal Leave Days that are afforded to an employee (under Article 16.1) may be taken, starting with January 1<sup>st</sup> of each year. By virtue of the recent round of negotiations between the parties, the Carrier and Organization agreed to increase the quantity of Personal Leave Days that an employee is entitled to, based on his years of service with the Carrier. Article 16.1 was amended to reflect the parties' agreement.

These facts being the case, what portion of Article 16.3 was amended to reflect that the new quantity of Personal Leave Days provided for in 16.1 are to be given in the middle of calendar year 2010, as opposed to January 1, 2011 to March 31, 2012? If the answer is that no portion of Article 16.3 was changed, then employees working under the ST/BMWE Agreement will be entitled to receive the "extra" PLD between January 1, 2011.

**FINDINGS:**

By way of background, the record shows the parties negotiated a new agreement that became effective on August 1, 2010. One of the changes made to their agreement involved Article 16, which is quoted as follows:

**“Article 16. Personal Leave Days**

16.1 Effective August 1, 2010, a maximum of 5 personal leave days will be allowed on the following basis:

- a. Employees with at least 1 year of service will be entitled to 1 personal leave day.
- b. Employees with at least 5 years of service will be entitled to 3 personal leave days.
- c. Employees with at least 10 years of service will be entitled to 4 personal leave days.
- d. Employees with at least 20 years of service will be entitled to 5 personal leave days.

16.2 Personal leave days provided for in Paragraph 16.1 of this Rule may be taken upon 48 hours advance notice from the employee to the proper Carrier Officer.

16.3 **Personal leave days must be taken within a 15 month period beginning with January 1 of each year.** Personal leave days not taken within that 15 month period will be forfeited.

16.4 Payment for personal leave days will be 8 hours at the straight time hourly rate. When employees are working a four (4) day, ten (10) hours per day work week, the payment for personal leave days will be ten (10) hours at the straight time hourly rate.

16.5 If Personal Leave Days are taken immediately preceding or following a statutory holiday it is understood that the work day (or day, in case of an other than regularly assigned employee) immediately preceding or following the Personal Leave Day is considered as qualifying for holiday purposes.

**(Emphasis added)**

Except for an increase in the number of Personal Leave Days (PDL) and changes in qualifying years, Article 16 remains the same as it was on May 8, 2003.

It is the Organization's position that the increased benefit of the additional PDL in Article 16.1 came about as a "quid pro quo", in return for allowing the Carrier a degree of work flexibility under Article 37. They assert that it was their "understanding" that the employees could begin taking advantage of the new benefit as of the effective date of the new agreement.

Conversely, it is the Carrier's position that the extra PDL did not change the other elements of Article 16. They assert that the PDL's are calendar year benefits that begin January 1 of each year, and they assert that they are not to be applied retroactively. They contend that the parties agreed to change the amount of the PDL's, but did not agree to change the time frame in which they may be taken.


To support their position that the benefits in Article 16 are calendar year benefits, the Carrier directs the Boards attention to an on-property Second Division Award No. 13940, that involved the Carmen's craft with somewhat similar rules. In its denial award, the Neutral stated the following:

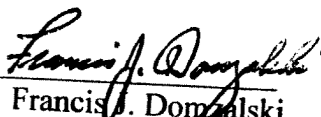
"The Organization's argument is that after one year of employment, **regardless of when**, an employee may take personal or sick days. Contrary to its position, the rules are clear that these benefits are calendar year benefits. Calendar years begin on January 1 and last until December 31."


This Board agrees with the logic set forth in the aforementioned Second Division Award; we also find in this case that the record is devoid of any evidentiary support that would permit employees to take their PDL's other than the time frame specified in Article 16.3. Clearly, if it was the intent of the parties to allow employees to begin taking PDL's in mid year, they should have so stated by either appropriate language into Article 16 or by a side letter.

Therefore, based on the record, it is the conclusion of this Board that the language contained in Article 16.3 is clear and lacking in ambiguity; hence the Board finds that it cannot sustain the Organization's position in this case.

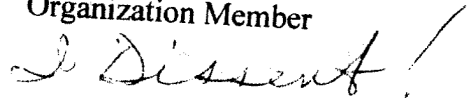
**AWARD:** The answer to the Organization's question is "No".

  
A. F. Lamonto  
Carrier Member

  
Francis J. Domalski  
Neutral Member

  
B. A. Winter  
Organization Member

Dated 1-11-2011

  
J. Dissent