

Award No. 3579
Docket No. 3290
2-GN&NP-EW-'60

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Lloyd H. Bailer when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 7, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L.-C. I. O. (Electrical Workers)

GREAT NORTHERN RAILWAY CO.

NORTHERN PACIFIC RAILWAY CO.

DISPUTE: CLAIM OF EMPLOYES: 1. That Sub-Station Motor Attendant Art Walsh was unjustly treated when the Carrier refused to compensate him for one (1) day's sick leave on February 5, 1958.

2. That accordingly the Carrier be ordered to compensate Art Walsh for eight (8) hours at his applicable straight time rate of pay for February 5, 1958.

EMPLOYES' STATEMENT OF FACTS: Sub-Station Motor Attendant Art Walsh, hereinafter referred to as the claimant, is regularly employed and assigned as such at the St. Paul General Office Joint Power Plant, St. Paul, Minnesota, by the Great Northern Railway Company—Northern Pacific Railway Company, who are hereinafter referred to as the carrier, and is paid on a monthly basis in accordance with Rule 11 of the controlling agreement.

The claimant was unable to work his regularly assigned work day February 5, 1958, account of illness and the carrier deducted an amount equal to one (1) day's pay from the claimants salary for February, 1958.

The claimant has been in continuous service of the carrier for three (3) years and the employes contend that the deduction of one (1) day's pay from the claimant's salary was improper under the provisions of Rule 15 of the controlling agreement.

This dispute has been handled with all officers of the carrier designated to handle such disputes, including the highest designated officer of the carrier, all of whom have declined to make satisfactory adjustment.

The agreement between the Great Northern Railway Company—Northern Pacific Railway Company and the employes employed in the St. Paul General Office Joint Power Plant, represented by System Council No. 28, International Brotherhood of Electrical Workers through System Federation No.

of employes on sick leave will be kept up by other employes. One of the conditions precedent to granting sick leave without deduction in pay, therefore, is that the work of the employe on sick leave will be kept up by other employes.

The work attaching to Mr. Walsh's position was not kept up by other employes on February 5, 1958. Therefore, Mr. Walsh did not qualify for sick leave without deduction in pay on this date in the application of Rule 15.

Inasmuch as the work attaching to Mr. Walsh's position was not kept up by other employes on February 5, 1958, I cannot agree that this employe is now entitled to payment of eight hours at straight time rate on that date. The claim of Mr. Walsh is declined.

/s/ G. M. Hare
Chief of Labor Relations"

The general chairman was specifically advised that in order to validate a claim for payment of time lost while absent on account of illness the work of the absent employe must be kept up by other employes. The work attaching to Mr. Walsh's position was not kept up by other employes on February 5, 1958 within the meaning of Rule 15, and this fact is not disputed.

The carriers have no record of a prior instance when an employe was absent on account of illness and was allowed payment therefor if the work of the absent employe was not kept up by the employes. A check of the records fails to disclose an instance of this type.

The carriers have shown that in the application of Rule 15 the work of the absent employe must be kept up by other employes in order to validate payment for time lost while absent on account of illness; that Mr. Walsh was absent on account of illness on February 5, 1958; that the work attaching to Mr. Walsh's position was not kept up by other employes on February 5, 1958; and that consequently Mr. Walsh is not entitled to payment for time lost on February 5, 1958. The claim covered by this docket should be denied.

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.

At the time involved in this dispute Claimant Walsh was a monthly rated substation motor attendant at Carriers' St. Paul General Office Joint Power Plant, being regularly assigned Saturday through Wednesday, 4:00 P. M. to 12:00 Midnight. On Wednesday, February 5, 1958, claimant was absent due to illness. This position was filled on that date on an overtime basis by John Thompson, who was held over for his first trick assignment as substation motor attendant at this location. Although claimant had sufficient continu-

ous service to come within the scope of Rule 15, Carrier deducted one day's pay from his monthly salary on the ground that the work of his position was not kept up by other employees on the date in question.

The Rule 15 language relied on by the Carrier states: "Work of employees on sick leave will be kept up by other employees."

The Organization contends Rule 15 does not provide that an employee otherwise entitled to sick leave pay will be deprived of pay if the work of his position is not kept up by other employees, and that in any event it is the Carrier's obligation to see to it that the work of the absent employee is thus kept up. It is urged that the sole purpose of the cited agreement language is to grant the Carrier the right to have other employees perform the work of an employee on sick leave in addition to their own work without fear of penalty, in return for granting sick leave without deduction in pay.

It is evident that the work of the aggrieved was not kept up by other employees within the meaning of Rule 15. We agree with the Organization that the purpose of the cited language of the rule is to grant the Carrier the right to have the absent employee's work performed by others without fear of penalty, in exchange for granting sick leave without deduction in pay. In the instant case, however, the Carrier incurred the penalty of paying another employee at overtime rate for the eight hour period that claimant was absent.

While the Organization contends it is Carrier's responsibility to have the work of the ill employee performed by others, no showing has been made in this docket that it was possible to obtain this result without penalty to the Carrier. We are not entitled to ignore the cited language relied upon by the Carrier. It is to be presumed that in agreeing to place this language in the rule the parties intended it to have force and effect.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 4th day of November 1960.