Award No. 4150
Docket No. 3919
2-CB&Q-CM-'63

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 95, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. — C. I. O. (Carmen)

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

A. That under the current agreement the Chicago, Burlington & Quincy Railroad Company improperly withheld Carman Wanek from working his assigned work days in his work week.

B. Accordingly, the Chicago, Burlington & Quincy Railroad Company be ordered to compensate Carman Wanek 8 hours on May 30, 1958 (a holiday), 3 hours on June 2, 1958 and 5 hours on June 3, 1958 at the pro rata rate of pay.

EMPLOYES' STATEMENT OF FACTS: Carman Wanek is employed by the Chicago, Burlington & Quincy Railroad Company (hereinafter referred to as the carrier) at their West Burlington, Iowa Shops as a carman with a seniority date as of January 23, 1950. However, at the time of this claim he had approximately sixteen years with the carrier as a carman helper and then a carman.

Carman Wanek's work week is Monday through Friday — his rest days are Saturday and Sunday. His assigned hours are 7:00 A. M., to 12 Noon, 12:30 P. M., to 3:30 P. M. He worked his regular assignment on Thursday, May 29, 1958. The following day, May 30, 1958 was Decoration Day, a recognized holiday on this carrier. Not having to work, Carman Wanek entered the Mercy Hospital for a physical examination or check-up of his own accord contemplating the examination would be completed during the week-end, however, it developed because of the holiday and the following week-end, his X-Rays could not be completed until the morning of June 2, 1958. Carman Wanek (hereinafter referred to as the claimant) upon learning that he would be unable to report for work at his regular starting time of 7:00 A. M., on June 2, 1958 had the report made to the local officials that he would be late for work on that day but would be in the shops by noon.

"June 3, 1958

"TO WHOM IT MAY CONCERN:

"This is to inform you that Mr. George Wanek has been under my medical care.

"Mr. Wanek was released from the hospital June 2nd, 1958, and may return to work as of this date.

"Yours very truly,

John F. Foss, M. D."

It will be noted the doctor's release was dated Tuesday, June 3, 1958, and stated that Mr. Wanek "may return to work as of this date." This obviously did not qualify the claimant for returning to work the day previous, Monday, June 2, as he contends. In other words, the doctor's statement, when finally obtained, supported the carrier in holding him off work Monday afternoon.

The requirement of a doctor's statement was a simple one. No physical examination was requested. Neither was any particular doctor's statement required, such as that of the company physician. It was known Mr. Wanek was in the hospital, and that he must have been under some doctor's care. The written statement of his own physician, Dr. Foss, was surely not an unreasonable requirement in these circumstances.

In conclusion, the carrier asserts:

"1. The claim for the holiday, Friday, May 30th and Monday, June 2nd, must fall because claimant did not report for work until 5/8ths of the working day had already elapsed. The Carrier was under no obligation to let him work for only 3 hours on Monday.

2. The claim for Tuesday, June 3rd, must fall since the claimant's loss of 5 hours' pay that day was solely because of his refusal to obtain a written statement from his doctor. This was not an unreasonable requirement in view of all the circumstances."

The claims presented herein must 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 were given due notice of hearing thereon.

Memorial Day 1958, fell on Friday, a workday of Claimant's workweek; he worked the day preceding and would normally have worked on Monday, June 2, 1958, the workday immediately following. But he chose to use the holiday weekend for a voluntary physical examination, which was not completed in time

for him to report for work at 7:00 A. M. the start of his shift. He therefore sent word that he would be late but would report by noon.

He reported at 12:30 P. M., three hours before the end of his shift, and was informed that he could not expect to return to work for three hours and receive pay for the preceding holiday. But he remained at the shop and was later told that he must have a release from his doctor before resuming work.

He reported at the opening of his shift on Tuesday morning, June 3, 1958, without his doctor's release, but was not permitted to work until 12:30 P. M., after he had obtained it.

The Carrier's contentions are, first, that it is not required to permit an employe to work when he reports for the last three hours of his shift; and second, that it was proper to demand a written statement from the doctor before letting Claimant resume work.

The Carrier's first contention must be sustained. No rule, binding established practice, nor award is cited to the contrary.

Eight hours constitute a work day (Rule 1); and there is no rule which entitles an employe to report for less than his full shift as a matter of right. Rule 19(a) provides that an employe detained from work shall notify his foreman as early as possible; but it does not provide that he shall be entitled to work for the remainder of his shift, perhaps because the Carrier should be free to call a substitute if necessary and available. Rule 19(b) provides that an employe returning to work shall report on the day previous to his resumption of work. The latter provision is not applicable here, but indicates the importance of the full work day and of early notice to permit orderly planning of employment and work.

The fact that the Carrier permitted Claimant to work the final three hours on the next day, after he had obtained the release, does not mean that such action was mandatory, either with or without the release.

And since the Carrier was not under a legal duty to permit Claimant to work the last three hours on Monday, it was entitled to impose any ordinary condition precedent, such as the doctor's release.

But on Tuesday he reported for work at the start of his regularly assigned shift, and the requirement of the doctor's release presents a different question. The Carrier maintains that it has been a consistent practice to require doctor's releases after hospitalization, and cites sixteen previous instances between 1943 and 1958 in which Claimant obtained such releases before returning to work. But Carrier also states that in all such instances he had been off duty because of illness, which tends to confirm the Organization's contention that under the established practice such releases are obtained only by employes who have been off because of serious illness or injury, but not when they have merely gone for a physical check-up.

The Carrier does not cite any instance in which a doctor's release has been required on an employe's return from a voluntary physical check-up not resulting from illness, but contends that it was reasonable in this instance because of Claimant's record of sixteen illnesses in sixteen years, the last of which ended only six weeks before this incident. But the fact remains that claimant produced a doctor's release after the last illness; and there is no

suggestion in the record that his condition had since changed. We find nothing in the record to justify the requirement.

The Carrier cites Award 3561. But in it this Division said:

> "Where a change in the employe's condition has occurred which is obvious and likely to subject the employe or his fellow workers to hazard, the carrier, acting in good faith, has a duty to determine if his condition is such as to render his continued employment in that capacity hazardous."

But this is not such an instance, as above stated.

AWARD

Claim (a) denied as to June 2, 1958, and sustained as to June 3, 1958.

Claim (b) denied as to May 30 and June 2, 1958, and sustained as to June 3, 1958.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February, 1963.

OPINION OF LABOR MEMBERS CONCURRING IN PART AND DISSENTING IN PART TO AWARD No. 4150

We concur with that part of the findings and award that sustains compensation for June 3, 1958 but are constrained to nonconcur with that part of the findings and award that denies compensation for June 2, 1958 and eight hours Holiday pay for May 30, 1958.

The paragraphs of Rule 19 are not correctly identified in the findings; paragraph 19(a) should be 19(e) and 19(b) should be 19(f). Claimant complied with 19(e) by notifying his foreman as early as possible that he would be detained from work until noon. There is nothing in this paragraph, either implied or express, to the effect that an employe will not be permitted to go to work when he reports for work. Simple justice would require the same application of the agreement to Monday, June 2, 1958, as was given to Tuesday, June 3, 1958. This being the case, the entire claim should have been sustained as presented.

C. E. Bagwell

T. E. Losey

E. J. McDermott

Robert E. Stenzinger

James B. Zink