Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 8700
Docket No. 8811
2-ICG-SM-'81

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

Parties to Dispute: (Sheet Metal Workers' International Association
(Illinois Central Gulf Railroad Company

Dispute: Claim of Employes:

1. That the Illinois Central Gulf Railroad Company violated Article VII (BEREAVEMENT LEAVE) Mediation Agreement Case A-10226 dated December 4, 1978 and subsequent amenments and interpretations when they failed to compensate Sheet Metal Worker W. D. Sheppard for April 12 and 13, 1979.

2. That accordingly the Illinois Central Gulf Railroad Company be ordered to compensate Mr. Sheppard in amount of sixteen (16) hours at the journeyman's rate of pay.

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.

Claimant is a Sheetmetal Worker employed by the Carrier and is assigned to work 7:00 a.m. to 3:20 p.m. Monday through Friday.

On Wednesday, April 11, 1979, after he had completed his shift, Claimant and his family were notified that in the opinion of a doctor his mother-in-law would not live through the night. Due to the considerable distance involved, Mr. Sheppard left Wednesday to go to his mother-in-law's bedside. She died at 1:00 p.m. Thursday, April 12, 1979. The funeral was held and she was buried on Saturday, April 14.

On June 11, 1979, the Organization, on behalf of Mr. Sheppard, filed a claim for two days pay as a result of the time lost April 12 and April 13 pursuant to Article VII (Bereavement Leave) of Mediation Agreement Case A-10226 dated December 4, 1978, and subsequent amendments and interpretations. The claim was denied by the Carrier and it was appealed in a proper and timely manner up to and including this Board.

Article VII (Bereavement Leave) states in pertinent part:

> "Bereavement leave, not in excess of three calendar days, following the date of death will be allowed in case of death of an employee's brother, sister, parent, child, spouse or spouse's parent. In such cases a minimum basic day's pay at the rate of the last service rendered will be allowed for the number of working days lost during bereavement leave. Employees involved will make provision for taking leave with their supervising officials in the usual manner."

Also pertinent to this dispute are the agreed upon interpretations the parties published in connection with Article VII. The following questions and answers contained in that interpretation are relevant:

> "Q-1: How are the three calendar days to be determined?
>
> A-1: An employee will have the following options in deciding when to take bereavement leave:
>
> a) three consecutive calendar days, commencing with the day of death, when the death occurs prior to the time an employee is scheduled to report for duty;
>
> b) three consecutive calendar days, ending the day of the funeral service; or
>
> c) three consecutive calendar days, ending the day following the funeral service.
>
> Q-2: Does the three (3) calendar days allowance pertain to each separate instance, or do the three (3) calendar days refer to a total of all instances?
>
> A-2: Three days for each separate death; however, there is no pyramiding where a second death occurs within the three-day period covered by the first death.
>
> Example: Employee has a work week of Monday to Friday, off-days of Saturday and Sunday. His mother dies on Monday and his father dies on Tuesday. At a maximum, the employee would be eligible for bereavement leave on Tuesday, Wednesday, Thursday and Friday.

It would be facilitative to consider the claim for each date separately. April 12 will be considered first. In regard to the first date, the intent of parties, as the Carrier argues, is clear. The language of the Article makes it clear that bereavement leave for days lost will be allowed <u>following</u> the date of the death. The date of the death was April 12 and under the unambiguous language of Agreement the Claimant in this case is not eligible for pay until the 13th, the

first date following the death. This restrictive interpretation regarding eligibility for the 12th is underlined by the interpretation of the Article by both parties. The answer to question Number 1 outlines three options in taking bereavement leave. As read by the Board, only one of those options constitute an exception to the general rule that an employee is not eligible for bereavement pay until a date following the death. That exception is option (a). It is the only option which allows pay for time lost on the date of death and it does so only when the death occurs prior to the time the employee is scheduled to report for duty. In this case Mr. Sheppard was to report for duty at 7:00 a.m. and the death occurred after that at 1:00 p.m.

While it is recognized that this result is to the disadvantage of Mr. Sheppard and may be considered unfair especially in light of the tragic circumstances, the Board's compassion for anyone in similar circumstances must give way to the clear meaning of Article VII as interpreted by both the Carrier and Organization. We do not sit to dispense or legislate our own brand of industrial justice but to interpret the meaning of the Agreement within the language of those Agreements and the intent behind them. The intent of the parties in respect to April 12 is clear by virtue of the language of Article VII and its mutual interpretation. The Claimant is not eligible for pay for that date.

However, the intent of the parties regarding the 13th is not clear. It is confused and complicated by the fact that the 13th was a recognized paid holiday under the contract and by the fact the agreed upon interpretations do not speak to the facts surrounding the 13th.

The Carrier argues that Mr. Sheppard is not eligible for pay because April 13 was not a working day and that the Agreement only allows pay for "working days" lost, not for holidays lost. The Carrier also argues that the Claimant is not entitled to holiday pay under the Holiday Pay Rules. However, we need not address ourselves to that issue because the Organization comes to the Board only seeking relief under Article VII (Bereavement Leave) and not the Holiday Rules.

The Organization, on the other hand, argues that the narrow interpretation of the Carrier is contrary to the fundamental intent of the Agreement. They state, "The intent of the parties is most clear, the purpose being to cover wages lost by an employee due to the death of family member. On the other hand, it is not the intent of the parties that an employee would gain additional compensation as a result of a death, therefore, our claim when considering the full intent of the parties is consistent and justified."

In considering the competing arguments, it is concluded that the Carrier has not convinced the Board that it was the clear and unambiguous intent of the parties to deprive Mr. Sheppard of both days, especially Friday. The interpretation suggested by the Organization is a more reasonable result in the face of the basic and fundamental purpose of the Agreement. The phrase "working days", upon which the Carrier's argument turns, doesn't seem ambiguous when considered out of context. However, when the phrase is read in the context of the particular facts and circumstances of this case, the Carrier's interpretation, which would result in no pay for two lost days during the employee's normal work week due to a family death, becomes extremely strained. When the Agreement is read as a whole with

its basic purpose in mind the literal meaning of "working days" should give way to a definition that would encompass an unpaid holiday that falls within the employee's work week. To deny any payment under these circumstances would be a perversion of the basic purpose of the Agreement. The meaning of "working days" should be wide enough to include a day that the employee would have otherwise earned compensation save being absent account a family death. It is clear that if the Claimant had not experienced the death of his mother-in-law he would have received pay for Friday and that because of the death he didn't.

In rejecting the Carrier's narrow and literal interpretation of the phrase "working days" we are mindful of the words of Mr. Justice Holmes when he said "A word is not a crystal, transparent and unchanged; it is the skin of a living thought and may vary greatly in color and content according to the circumstances and the time in which it is used". An interpretation of an Agreement should be flexible enough to serve its purpose. Narrow and technical interpretations should give way to interpretations that accomplish the evident aims of the Agreement. (See Rentschler v. Missouri Pacific Railroad 253 N.W. 694, Nebraska 1934). We also note the following remarks by Referee McDonald in Second Division 4509, where he also quoted Referee Daugherty:

> "There is a cardinal rule of interpretation of contracts to the effect that where an agreement is equally susceptible of two meanings, one of which would lead to a sensible result and the other to an absurd one, the former will be adopted. (Referee Swacker in First Division Award 4232).
>
> Following this same vein a little further, Referee Daugherty in recent First Division Award 19929 found that:
>
> 'No one can deny that there was perhaps a technical violation of the literal language of said rules. But this is too simple and superficial an answer. It fails to probe behind said language for the basic intent of the parties when they wrote the language. It fails also to apply a cardinal tenet of contract construction; namely, the rule-of-reason principle that, if alternate constructions are possible, the more reasonable one should be selected. That is, it fails to apply the principle that, if possible, contract language should not be interpreted so as to achieve a result that might be called peculiar or absurd.'"

Further, it is well noted that parties cannot possibly invision all future situations when creating Agreement language and it is not believed by this Board that the parties when signing the Agreement, had in mind a situation such as Mr. Sheppard's. The lack of precision in the language, in this case, cannot operate to deprive him of the benefit of the Agreement's basic intent. His situation is extremely unusual and the frequency of similar situations is probably nil.

The Board also agrees with the Organization that granting the Claimant one day's pay for Friday is not inconsistent with the Agreement. The intent of the Agreement was to protect employees from loss of pay during the normal work week as a result of a family death but the Agreement also was careful to protect the Carrier from making double or pyramid payments. An employee, under Article VII, could not receive bereavement pay in addition to a regular day's earnings. This is made clear by option (a). The pyramid or double payment concern is also evident in Question 2 of the interpretations. The intent would be seen also to prohibit double payments on holidays. In this light, the Board's ruling in respect to the 13th is not inconsistent with the Article's intent because it does not constitute a double payment or payment for a normally scheduled rest day.

In conclusion, while the Board understands the technical nature of the Carrier's argument with respect to the 13th, it must be recognized that interpretation can strangle meaning and fundamental purpose and further that absurd or unreasonable results must be avoided.

A W A R D

The claimant shall be compensated for one day's pay for Friday, April 13.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 29th day of April, 1981.