

The Second Division consisted of the regular members and in addition Referee James F. Searce when award was rendered.

Parties to Dispute: { Brotherhood Railway Carmen of the United States
and Canada
{ Chicago, Milwaukee, St. Paul and Pacific Railroad Company

Dispute: Claim of Employees:

1. That Carman F. Fricano was unjustly denied payment of three (3) days' bereavement pay from May 23, 1980 through May 26, 1980.
2. That the Chicago, Milwaukee, St. Paul and Pacific Railroad Company be ordered to compensate Carman F. Fricano in the amount of three (3) days' pay at the rate applicable to his position at the time he was denied such payment.

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 was assigned to work at the Carrier's facility at Bensenville, Illinois, regularly assigned to Tuesday through Saturday and Sunday and Monday as rest days at the time of events germane to this dispute. On May 23, 1980 -- a Friday -- he was scheduled to start duty at 3:00 p.m. Prior to such time, he was advised that his father had passed away in Italy, where he lived. The Claimant did not report for duty that day or May 24, also a scheduled work day. He filed a claim for three days' pay citing Article V of the December 6, 1978 Mediation Agreement (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. Any restrictions against blanking jobs or realigning forces will not be applicable when an employee is absent under this provision."

The Carrier denied the claim, while not questioning the validity of the death, on the basis that such benefit is intended to be applied so as to make up losses in compensation where an employe must attend a funeral or attend to matters related to such a tragic circumstance. Here, the Carrier argues, the Claimant neither attended nor could have attended the funeral. The Carrier cites an interpretative bulletin it issued explaining how such leave is to be applied, and which the Carrier asserts was agreed to by appropriate representatives of the Organization. Noting that nothing in the record attests to the mutuality of agreement of such interpretations, we are also unable to find guidance in such bulletin that makes attendance of a funeral a condition of receipt of bereavement pay. Certain questions and answers establish the timing of application of such leave in relation to the timing of a funeral but does not mandate attendance per se. Article V does not specifically require attendance at a funeral in order for an employe to gain entitlement; presumably, the parties would have so stated had they intended such a narrow interpretation.


In the instant case it was uncontested that the Claimant was notified of the loss of his father on May 23, 1980 prior to commencement of work and was entitled to lay off that day. He was off on the 24th as well, under circumstances which this Board finds in concert with the intent of Article V. However, May 25, 1980 was a scheduled rest day and the Claimant consequently lost nothing by observing such day. In sum, the Claimant's actions were directly related to his father's death and are a reasonable application of the relevant provisions of the December 6, 1978 Mediation Agreement. Article V was violated by denying the Claimant compensation for May 23 and 24, 1980; he is to be made whole in that regard. No compensation is deserved for May 25, 1980.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 16th day of March, 1983.