Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 13481
Docket No. 13341
00-2-98-2-27

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

(Brotherhood Railway Carmen Division
PARTIES TO DISPUTE: (
(Grand Trunk Western Railroad Incorporated

STATEMENT OF CLAIM:

"Claim of the Committee of the Union that:

1. That the Grand Trunk Western Railroad Company/CN violated the terms and conditions of the current Agreement on February 3, 1997 when Carman J. S. Sochocki was denied the right and privilege of taking a Personal Leave Day as provided in Article III of the Agreement dated January 10, 1996.

2. That accordingly, the Grand Trunk Western Railroad Company/CN now be ordered to provide the following relief: That Carman J. S. Sochocki be compensated for eight (8) hours pay for February 3, 1997 for being denied the Personal Leave Day and that he be granted a Personal Leave Day for use later in the year."

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

The facts giving rise to this dispute are not at issue. Claimant, a Carman employed by the Carrier at its Flat Rock, Michigan facility and working a second shift vacation relief assignment on the claim date, laid off sick on February 3, 1997 and sought pay for a personal leave day. District Mechanical Supervisor B. S. Shearer denied the request on grounds that the Claimant had missed more than two days of work in 1996 and thus was not entitled to a paid sick day under the Agreement. That calculation was based upon the Claimant's attendance records which reflected full-day absences on March 11 and 27; 3 hours missed on January 19; 4 ¼ hours missed on February 27; 3 hours missed on May 10; and 3 hours missed on December 6, 1996.

The Organization here asserts that the Carrier violated Article III - Personal Leave of the January 10, 1966 Agreement between the parties by tallying up the hours the Claimant missed on the January, February, May and December dates listed above to bring his absences in 1996 to a total of more than two days. The relevant terms of Article III provide as follows:

> "In recognition that all employees represented by the BRC/TCU do not have paid sick leave days, they will be provided an additional one personal leave day for the year 1997 on the following basis:
>
> (a) Employees who do not have in excess of two days of absences without any compensation during the calendar year 1996 will be allowed one additional personal leave day for the year 1997."

According to the Organization, these provisions make no mention of cumulative hours or minutes. Accordingly, if an employee is compensated for a partial workday, the time missed cannot be counted in determining whether he has run afoul of the "two days of absences" Rule.

The Carrier maintains that the claim attempts to sharpshoot the Agreement. The Claimant does not deny that in 1996 he missed 13.25 hours in excess of two days' work. To argue that only full days missed should be included in calculating the two days of absences is to abandon common sense--such an interpretation produces absurd results. Under the Organization's reading, when an employee has already missed two full days

and misses an additional three half-days, he would be treated more favorably than the similarly situated employee who misses only an additional one full day. If the parties intended to adopt a program for employees with no formal sick leave bank that would encourage regular attendance, what sense would that interpretation make? The Board has repeatedly held that in construing ambiguous terms, where two meanings are possible, the interpretation that leads to a rational result is to be preferred. According to the Carrier, 13.25 hours is clearly "in excess of two days." The Claimant had "in excess of two days of absences" in 1996 and is not entitled to a paid sick day in 1997 under Article III.

The Carrier's logic is straight, but it airbrushes the standard set in the Agreement. The standard is "two days of absences without any compensation." In order to have a paid sick day in 1997, the employee may not have "more than two days of absences without any compensation" in 1996. The Claimant met that standard. He accumulated two days of absences without any compensation, and four more partial days of absence for which he received some compensation.

In construing the Agreement as it does, the Carrier places the accent on the well-established Rule of construction that counsels avoiding nonsensical results in addressing ambiguous terms. Clearly, where as here two meanings may be given to the parties' word choices, any credible construction must read the Rule sensibly. But another basic canon urges the decision-maker wherever possible to give meaning to all words used. Carrier's argument scants that Rule.

Here the draftsmen described the sole type of time to be considered in determining eligibility for sick pay as "days of absences without any compensation." Their language must be given its plain meaning. Additionally, the Board does not think it is reading too much into the provisions to say that one has to read their silence as well as their sounds; what the words fail to say cannot mechanically be held to give management the right to fill in the specifics of their choice. If the parties had meant to say what the Carrier says they intended, they easily could have adopted a standard such as "misses over 16 hours of work;" or "misses more than two days or portions thereof;" or "misses any time in excess of two days." But because a paid sick day is dependent upon having less than "two days of absences without any compensation," it follows that the several days for which Claimant received partial compensation are not within the definition of a day "without any compensation."

It may, as the Carrier argues, be unreasonable to afford employees who miss only partial days better treatment than those who miss full days. Such a result would plainly not give the Carrier optimal results in encouraging good attendance. But few principles are so well established as that which precludes the Board from passing upon the merits of the bargain. We have no reliable way of knowing what went into the back and forth that produced the language in dispute. If the Carrier intended to avoid such consequences, the word-smithing was easy. Moreover, it is not irrational to believe that the parties' intention was to cut some slack for people who must come in an hour late or leave early for reasons of family emergency, doctors' appointments and the like. Or the parties may simply have had no clear mutual understanding as to the role partial days missed would play in the calculation and simply signed off on a slack draft. Or they may have intended to either include or exclude them, but were compelled by the delicate process of finding accommodation and selling it to the executive suite and shop to live with deliberate ambiguity. If either of those latter premises are installed, the parties need no playbill to recognize that they were leaving the domain of certainty and going to the race track.

For the reasons stated above, the Board sustains the claim. The appropriate remedy is eight hours compensation to the Claimant at his applicable rate for the personal leave day denied on February 3, 1997.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 11th day of January, 2000.