Award Number 399
Docket Number CL-446

# NATIONAL RAILROAD ADJUSTMENT BOARD
## Third Division

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES
PACIFIC ELECTRIC RAILWAY COMPANY

STATEMENT OF CLAIM.—

"Claim of B. J. Wadleigh and H. J. Dennison for pay for sick leave under Rule 60 of the Clerk's current Agreement."

STATEMENT OF FACTS.—B. J. Wadleigh, trucker at the Los Angeles freight station, was absent on account of illness for twelve days, February 10 to 22, 1936. H. J. Dennison, trucker, was absent on account of sickness for six days, February 7 to 13, 1936. No employe was called or required to work in place of these employes, and no overtime was worked by other employes as a result of the absence from duty of Messrs. Wadleigh and Dennison on the days shown.

There is in evidence an agreement between the parties bearing effective date of April 1, 1935, from which is cited Rule 60, reading:

"SICK LEAVE.—RULE 60. Where the work of any employe is kept up by other employes without cost to the Carrier, an employe who has been in the continuous service of the Carrier one year and less than two years, will not have deduction made from his pay for time absent on account of a bona-fide sickness of himself, until he has been absent six (6) working days in the calendar year; an employe who has been in continuous service two years and less than three years, nine (9) working days; an employe who has been in continuous service three years or longer, twelve (12) working days. Deductions will be made beyond the time allowance specified above.

"The employing officer must be satisfied that the sickness is bona-fide and that no additional expense to the Carrier is involved. Satisfactory evidence as to sickness in the form of a certificate from a reputable physician, preferably a Company physician, will be required in case of doubt.

"The above limits of sick leave may be extended in individual meritorious cases and under the conditions specified, but only by agreement of the representatives of the Carrier and of the employes."

Both Messrs. Wadleigh and Dennison have been in continuous service of the carrier over three years, and their sickness was bona fide.

POSITION OF EMPLOYES.—The right of an employe to be paid while off sick is based upon two premises under Rule 60. First, work must be kept up by other employes without cost to the carrier; second, the sickness must be bona fide.

There is no dispute as to the genuineness of the illness of the claimants. No physician's certificate was requested by the carrier, and it has not raised such issue as a defense at any time in the prosecution of this case. That the work was kept up by other employes without cost to the carrier is conclusively proven by the letter of Mr. T. H. Wagenbach, Assistant Superintendent, to Division Chairman W. J. Roundtree, under date of March 30, 1936, reading in part:

"It is my contention that while no one was employed or called from the extra list to fill Mr. Wadleigh's place, the nature of the work is such that within the meaning of the Rule the work was not kept up by other employes without expense to the Company."

Mr. Wagenbach admits in this letter that no one was employed or called from the extra list to fill Mr. Wadleigh's place, and the same is true with respect to the claim of Mr. Dennison.

The carrier has never at any time in the handling of this dispute offered any evidence that the work was not kept up by other employes without expense to the carrier. On the other hand, the organization has contended throughout the case that the regular force only was used while these employes were off; that no one worked in their place and that no overtime was claimed by any employe as a result of the absence of Wadleigh and Dennison.

POSITION OF CARRIER.—Mr. Wadleigh, hourly-rated trucker, was absent on account of illness for twelve days, February 10 to 22, 1936, and Mr. Dennison, hourly-rated trucker, was absent on account of illness for six days, February 7 to 13, 1936. No employe was required to work in the place of these employes, and no overtime was worked by other employes as a result of their absence. On February 10, 1936, in order to meet truck competition between Los Angeles and the Harbor at San Pedro, all first class freight for the Pacific Electric Railway and the Southern Pacific Company moving between Los Angeles and the docks at Los Angeles Harbor was changed from rail transportation to transportation by truck. Prior to that date, the Southern Pacific freight between Los Angeles and the Harbor was handled by the Pacific Electric in Pacific Electric cars. This freight was handled through the Los Angeles freight station of the Pacific Electric. With the inauguration of truck transportation, this S. P. freight moved direct to and from the S. P. freight station and the Los Angeles Harbor. As a result of this diversion of business, the following Pacific Electric truckers were laid off; on February 7, 1936, W. A. Cunningham, J. A. O'Neil and T. J. Lyons; on February 8, 1936, F. L. Smith. In addition to these lay-offs, William Hernandez was absent on February 15. It will be noted that this force reduction occurred at the same time that Messrs. Wadleigh and Dennison were absent on account of sick leave. We contend that if the sick leave of Wadleigh and Dennison had not coincided with the date of these force reductions, it would have been necessary to lay off additional men to equalize the reduction in work due to the substitution of truck transportation and consequent diversion of business to the S. P. By the time Messrs. Wadleigh and Dennison returned, there was a pick up in business due to improvement in the steamship situation after the close of the maritime strike, as well as a general business pick up, so that it was unnecessary to make any further lay-off to offset the return of these two men.

It is, therefore, clearly evident that the sick leave of Wadleigh and Dennison served in lieu of a force reduction, and if they are to be paid for this time off, it would constitute a direct and additional expense to the carrier, and as there was a decrease in work, it would be improper to claim that their work had been kept up by the remaining employes. In consequence, we cannot be satisfied that no additional expense to the carrier was involved, as is contemplated in the second paragraph of Rule 60, and which specifies that—"the employing officer must be satisfied that no additional expense to the Carrier is involved."

These two cases prove that in the application of the sick leave rule, the evidence of "no additional expense" does not depend upon the employment of additional men to work in the place of such absentees, or that the men remaining in service be worked longer hours as any marked fluctuation in the amount of freight to be handled by hourly-rated truckers would necessitate an adjustment of either the number of truckers employed or the number of hours worked in order to maintain an economic ratio.

OPINION OF BOARD.—Both parties to this dispute are in agreement upon the fact that no employes were required to work in the place of either B. J. Wadleigh or H. J. Dennison during the periods in question, that overtime was not worked by other employes as a result of the absence of the claimants, and that their sickness was bona fide.

FINDINGS.—This dispute was submitted to this Division of the Adjustment Board by the Brotherhood ex parte, and both the petitioner and respondent carrier have jointly certified that hearing thereon is not desired.

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the carrier and the employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the complainant employes have been in continuous service of the carrier in excess of three years; their sickness was bonafide; and their work was kept up by other employes and no additional expenses to the carrier was involved as a result of their absence on the days in question.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: H. A. JOHNSON
*Secretary*

Dated at Chicago, Illinois, this 9th day of March, 1937.