

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Arthur M. Millard, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP
CLERKS, FREIGHT HANDLERS, EXPRESS
AND STATION EMPLOYES**

**THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY
COMPANY**

(Frank O. Lowden, James E. Gorman, Joseph B. Fleming, Trustees)

STATEMENT OF CLAIM: "Claim of R. Fatschel, seniority date Oct. 31, 1916, employed as Mail Foreman, La Salle Street Station, Chicago, Illinois, for pay for working days while absent from duty Dec. 24th, 26th, 27th and 31, 1933, and Jan. 1st to 15th, inclusive, 1934, account personal injury sustained while off duty, or a total of 16 working days, at rate of \$142.00 per month less 7½%."

STATEMENT OF FACTS: In their submission the employes stated the facts as follows: "On Dec. 23, 1933, Mr. R. Fatschel, Mail Dock Foreman, rate \$142.00 per month, La Salle Street Station, Chicago, Illinois, was injured in an automobile accident while off duty. As result of this injury he was absent from his work as a foreman on the following regularly assigned working days:

December 24th
December 26th
December 27th

Then he reported for service and worked the 28th, 29th and 30th, when it developed he was unable to continue on the job on account of complications setting in due to this personal injury. He was off Dec. 31, 1933, Jan. 2nd, 3rd, 4th, 5th, 6th, 7th, 9th, 10th, 11th, 12th, 13th and 14, 1934, reporting for work on the morning of Jan. 16th, being off a total of 16 working days, for which he received no compensation. While away from his position the management filled this vacancy by appointment of another employe. It has been the practice in the La Salle Street Station Baggage Room to allow foremen and clerks pay for a reasonable number of days when off account sickness. Pay has been allowed in some cases to employes who have been off as much as thirty days account sickness."

The carrier stated the facts in substantially the same manner as the employes with the added statement that:

"It has been the practice in the La Salle Street Station Baggage Room to carry foremen and clerks for six days sick leave when work can be and is kept up by other employes."

POSITION OF EMPLOYES: "It has been the practice for a number of years to pay the clerks and foremen for a reasonable number of days while

Second: Could not be for more than six days pay because that is the practice which existed when the rule went into effect.

Third: Does not extend to payment of time for employes injured while off duty because the contract refers to sickness.

Fourth: Due to the fact this absence on the part of Foreman Fatschel occurred at the most busy and important time of the year, it was not possible to properly handle the work without assigning another employe to act as foreman and to pay that employe as a foreman and thus have a responsible supervisor in charge. The payment of a substitute foreman took the case in any event out of the practice."

OPINION OF BOARD: In this claim of R. Fatschel, a mail foreman in the La Salle Street Station at Chicago, Illinois, for a total of 16 days' pay while absent from duty during parts of December, 1933, and January, 1934, on account of accident, the employes contend that it has been the practice to pay the clerks and foremen for a reasonable number of days while away from work account of sickness and had the claimant been away as a result of illness instead of accident he unquestionably would have been paid for the time lost.

The carrier sums up its contentions in the statements:

First: That only one-half of the employe's salary is paid by this carrier.

Second: That the claim could not be for more than six days' pay because of the practice existing when the rule (or Rule 76) went into effect.

Third: That the claim does not extend to payment of time for employes injured while off duty because the contract refers to "sickness."

Fourth: That the necessity of placing another employe to serve as foreman and to pay that employe accordingly took the case out of the practice of the carrier.

In connection with the carrier's contention that only one-half of the salary of this claimant is paid by the carrier, the Board submits that according to the evidence presented the working rules of the employes handling this claim covers these employes in the La Salle Street Station; and that such working rules agreement and all grievances have previously been handled with the Rock Island management. In view of these conditions the Board rules that the employe covered by this dispute has the right of claim against the Chicago, Rock Island and Pacific Railway and such other controlling agency or agencies in the La Salle Street Station as is or represents the employer or employers of the claimant.

With reference to the practice existing either at the present or when Rule 76 of the agreement went into effect on Jan. 1, 1931, there is no expressed limitation of six days in the rule and, while a general practice of allowing only six days' absence with pay may have existed, the rule is not restrictive and undoubtedly allowances for sick leave and vacations was governed by length of service and other conditions determining the value of the employe and his service to the carrier, and which is evidenced by statements submitted in this claim.

Insofar as the rule refers specifically to "sickness," your referee submits that sickness, or injury occurring while an employe was on or off duty, would have the same effect. In either event the employe is disabled and incapacitated, and in the broad and reasonable interpretation of the rule disability by injury and disability by sickness would have an equivalent meaning in so far as they are applied to the conditions of this claim.

As to the time of the year when the accident took place and the necessity of replacing the disabled employe with another man, inasmuch as this claimant held a position as a "responsible supervisor in charge," there is

little doubt but that, whatever may have been the time or season of the year, a replacement during the absence of such employe would have been necessary.

In summing up the conditions and evidence in this claim and the fact that Mr. Fatschel was an employe of long service with the carrier, that he was paid on an established monthly basis and was a responsible supervisor of official standing; together with the unfortunate effort of the employe to return to work before he was fitted to do so, and which undoubtedly resulted in extending and dividing his lay-off into two periods, and the fact that the application of Rule 76 is not restricted to a general practice, the Board submits its opinion that under the conditions outlined and under the broad application of Rule 76 the employe should be reimbursed for such deductions as were made from his pay during the two periods indicated in the claim.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon and upon the whole record and all the evidence, finds and holds:

That the carrier and the employe involved in this dispute are respectively carrier and employe 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 under the conditions outlined in this claim the employe should be reimbursed for such deductions as were made from his pay during the periods indicated in the claim.

AWARD

Claim sustained to the extent of deductions made in the employe's pay during the periods at issue.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary.

Dated at Chicago, Illinois, this 19th day of October, 1937.