

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Ernest M. Tipton, Referee

PARTIES TO DISPUTE:

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

LEHIGH VALLEY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the Carrier violated the Clerks' Agreement:

1. When in April, 1945, it issued instructions that requests for sick allowance should be accompanied by a Doctor's certificate of disability covering the period for which sick allowance is requested.
2. The Carrier violated the provisions of Rules 56 (b), 78 and 82, when it issued such instructions without conference or notice to the Committee.
3. The Carrier shall be required to apply the provisions of Rule 56 (b) as the rule was applied prior to April 1, 1945.
4. The Carrier shall be required to compensate Mr. Henry J. Ward, Clerk, No. 6 Broadway, New York City, for wage loss suffered May 10, 1945, account of personal illness and the arbitrary cancellation of Rule 56 (b).

EMPLOYES' STATEMENT OF FACTS: "A revised working agreement was effected March 1, 1939 between the Carrier and Brotherhood of Railway Clerks; Rule 56 (b) reading:

"Sick Leave. (b) A limited amount of sick leave without the loss of pay may be granted monthly rated employees, subject to approval of the officer in charge of seniority district. Time absent account of sickness or good cause will not be charged to vacation allowances."

Effective June 1, 1940, President Williams issued the following instructions:

LEHIGH VALLEY RAILROAD COMPANY
GENERAL ORDER NO. 4

ALL CONCERNED:

"New York, May 23, 1940.

Effective June 1st, 1940, payment for time lost on account of sickness or other cause will be made upon authority of the President. A separate request for authority should be made on Form 37-A for each employe. All information called for by the form must be shown.

CARRIER'S STATEMENT OF FACTS: Rule 56 (b) of the present agreement with the Brotherhood of Railway and Steamship Clerks reads:

"A limited amount of sick leave without loss of pay may be granted monthly rated employees, subject to approval of the officer in charge of seniority district. Time absent account of sickness or other good cause will not be charged to vacation allowances."

Sick allowances are being made in accordance with this rule.

There have been varying instructions in effect over a period of years with respect to the requirement of employees furnishing doctor's certificate when requesting pay for sick allowance. Such a requirement is regulatory to avoid abuse of the rule and to permit the officer in charge of the seniority district to fairly and properly consider each claim for payment. To clarify the instructions then in effect, during April, 1945, the Carrier notified its supervisory officers it would be required in the future, in submitting sick allowance claims for Clerks, that same would have to be accompanied by doctor's certificate. In this particular claim, the employee did not comply with the instructions in effect in that no doctor's certificate was furnished, and the request for payment for time claimed lost was declined.

POSITION OF CARRIER: In this case, the Carrier maintains that in order fairly and equitably to allow pay on sick claims, it must have some reputable supporting evidence on which to decide whether the claim is bona fide under the rule. We feel there can be no reasonable objection on the part of employees in furnishing a doctor's certificate in support of their sick claim, and this has been done in hundreds of cases prior to and since April, 1945, and in all such cases payment has been allowed in accordance with this rule.

It was explained to the Committee, in discussing this claim on the property at various times since April, 1945, that the instructions requiring the furnishing of a doctor's certificate did not change their rule or violate any rule of their agreement, but, instead, established a means which would permit fair and impartial consideration of claims and would place no undue hardship on the employees. We feel the matter of sick claim allowances is one that must be subject to some regulatory measures, and it is the duty of the Management, as well as the duty of the Employees, to effect the necessary regulations to avoid abuse of the rule.

We maintain the instructions which were issued as complained of in this case were not arbitrary on the part of Carrier to avoid the payment of sick claims, but, rather, set up a procedure to permit proper consideration of the claims on an equitable basis.

In the claim of Employees, they cite Rules 78 and 82 as having been violated. There was no violation of these rules in the instant case, as no change or interpretation of the Clerks' rules was involved in the instructions requiring a doctor's certificate being furnished with claims made under Rule 56 (b), and these instructions were issued only as a means to properly administer the provision of that rule.

The employee in this claim failed to comply with the instructions in effect in not furnishing a doctor's certificate with the sick claim and, therefore, the claim could not be allowed.

In the light of the foregoing facts and circumstances set forth in this submission, it is the contention of the Carrier that the claim of the Employees should be denied.

OPINION OF BOARD: The issues in this claim are identical with Award No. 3332, Docket No. 3334, and for the reason stated in the Opinion of that Award the claim is sustained.

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 Employees involved in this dispute are respectively carrier and employees 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 Carrier violated the current Agreement as contended by the Petitioner.

AWARD

Claim (1, 2, 3, and 4,) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 22nd day of November, 1946.