

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 it failed and refused to compensate employees for time lost account of death in family—as provided in Rule 56 (b) of current agreement and Memorandum Agreement effective March 16, 1945.
2. That the Carrier shall be required to apply the provisions of Rule 56 (b) of the current agreement and Memorandum Agreement effective March 16, 1945, as applied prior to April 1, 1945.
3. That Carrier be required to compensate employee Mr. J. Mancuso, Clerk, Scott Street, Buffalo, New York, for time lost August 27, 28 and 29, 1945, account of death of his father; due to Carrier's arbitrary action.

EMPLOYEES' STATEMENT OF FACTS: "A revised working agreement between the parties, was effected March 1, 1939, Rule 56 (b) reading:

"Sick Leave—Rule 56 (b): "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." (Underscoring ours.)

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

LEHIGH VALLEY RAILROAD COMPANY

GENERAL ORDER NO. 4

"New York, May 23, 1940

ALL CONCERNED:

Effective June 1st, 1940, payment for time lost on account of sickness or other causes will be made only upon authority of the President.

A separate request for authority should be made on Form 37-A for each employee. All information called for by the Form must be shown.

ment that date referring to Rule 56 (b) negotiated. What actually happened was there were a number of unpaid sick claims pending as a result of employees' submission in Award 2483 involving claims for the years 1942 to 1945, inclusive. Through negotiations on the property, a basis of settlement was arrived at, and the settlement agreed to of these old cases was confirmed by letter dated March 16, 1945, to the General Chairman. To imply that this settlement constituted a memorandum of agreement for the disposition of other than the old cases referred to is far from the truth. As evidence there was no such intention, copy of the letter referred to is submitted. It will be noted in this letter, it specifically states "from early in 1942 to the present time." By no wishful thinking on the part of the Employees, could anyone read into the phraseology of this letter any reference to a memorandum of agreement regarding any provisions for sick claim allowances beyond the period of the old claims then being handled.

In the settlement of these old claims, we agreed, as a concession in them only, that employees absent on account of death in family would be paid maximum of three working days, same to be included in sick allowance granted for length of service. This feature of settlement of the claims then before the Carrier did not change the contracted rule. If this were intended, it would have been so stated and a proper agreement negotiated.

Under date of March 31, 1945, the Carrier wrote the General Chairman regarding an erroneous impression which came to its attention in connection with the application of the provisions of Rule 56 (b), as it seemed the Clerks felt the settlement of the old claims established the basis for future payments under this rule, and called attention to the fact that the settlement agreed to in the old claims did not establish a precedent for the settlement of future claims, and asked the General Chairman, if he had issued instructions to the Clerks contrary to the understanding had, that his instructions be corrected. This matter was further discussed with the General Chairman at conference on April 3, 1945, and on April 14, 1945 he acknowledged Carrier's letter of March 31, 1945. We maintain this exchange of letters definitely confirms our statement that the letter of Carrier of March 16, 1945, was not construed by either party as a memorandum of agreement for any claims beyond those presented at that time. Copy of Carrier's letter of March 31, 1945, and of General Chairman's letter of April 14, 1945, are submitted.

Rule 56 (b) is very definitely a sick leave rule and makes no provisions for payment for time lost for any other reason. There is no question of what the intent of the parties was when this rule was negotiated, and if it had been intended that claims for time lost in cases other than sickness were to be considered for payment, such a provision would have been written into this rule.

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: On August 27, 28 and 29, the Claimant, Mr. J. Mancuso, Clerk, employed at Scott Street, Buffalo, New York, was absent from duty due to the death of his father. The Claimant has been in the service of the Carrier for over twenty-five years. Petitioner contends there was "good cause" for Claimant to be absent from work on the three days in question, and during that period there was no additional expense to the Carrier by reason of his absence.

Petitioner bases its claim for pay for the three days in question upon Rule 56 (b) and a Memorandum Agreement effective March 16, 1945.

Paragraph (a) of Rule 56 deals with vacations, while paragraph (b) of that rule deals with sick leave. Paragraph (b) of that rule 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."

A mere reading of Rule 56 shows that it deals with vacation and sick leave. Paragraph (a) grants vacations and paragraph (b) grants sick leave.

The last sentence of paragraph (b) prohibits sick leave from being charged against vacation allowances. This sentence also prohibits "other good cause" from being charged to vacation allowances. This rule does not grant leaves of absence without loss of pay for "other good cause". Leave of absence for "other good cause" may be provided for in other rules of the Agreement or from past practices.

This claim is not based on past practice as was the claim in Award No. 3338. The claim here is based upon violation of Rule 56 (b) and the Memorandum Agreement of March 16, 1945. The Board thinks that Rule 56 (b) is plain and unambiguous. Absence from work on account of death in the immediate family would come within the phrase "other good cause". The Board holds that the facts in this dispute do not come within the provisions of Rule 56 (b).

In Docket No. CL-2520, Award No. 2483, Rule 56 (b) was interpreted and the claims in that docket were later settled on the property. The Petitioner contends that Carrier's letter dated March 16, 1945 and their letter of March 19, 1945 settling those claims constitute a Memorandum Agreement, while the Carrier contends that no such Agreement is shown by these letters; that only the claims then pending were settled and there was no agreement as to future claims. Carrier's letter dated March 16, 1945 in part reads:

"Confirming our conference in connection with the settlement of sick claims, which you submitted in detail from early 1942 to present time.

"We will settle those claims for time lost * * *."

On March 19, 1945, the Employees answered Carrier's letter using the following language:

"This will serve to acknowledge receipt of your letter of March 16th, file 220.123, case C-42-27, and confirms the understanding and agreement reached, for the allowance to be granted in the settlement of claims for time lost account of sickness or other good causes where additional expense is involved."

These two letters dealt only with the settlement of claims then pending and did not deal with future claims. It, therefore, could not be a Memorandum Agreement as contended for by Petitioner.

It follows that this claim should be denied.

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 has not violated the Agreement as contended by Petitioner.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 6th day of December, 1946.