

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Herbert B. Rudolph, Referee

PARTIES TO DISPUTE:

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

CHICAGO UNION STATION COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood, that:

(A) The Carrier (Chicago Union Station Company) violated and continues to violate the Agreement supplemental to Agreement when it denied Elaine C. Hamilton one (1) day's pay for time lost January 3, 1946, when she was absent account of illness;

(B) The Carrier shall be required to compensate Elaine C. Hamilton for the one day in question in accordance with Rules 53 and 54 of Agreement supplemental to Agreement.

EMPLOYEES' STATEMENT OF FACTS: Miss Elaine C. Hamilton was absent from duty January 3, 1946, account of illness and has been denied sick leave allowance for the one day. Miss Hamilton has been a monthly rated employe with the Chicago Union Station Company since September 8, 1942.

It has been the practice of the Carrier for many years to grant sick leave allowance to monthly rated employes.

POSITION OF EMPLOYES: It has been the practice of the carrier for many years to grant sick leave allowance to monthly rated employes. The carrier has stated they will continue the practice as shown in Rules 53 and 54 of agreement supplemental to agreement. Rules 53 and 54 of supplemental agreement are herewith set forth:

"In consideration of the employes with drawing Rules 53 and 54 in their original submission of April 28, 1938, the Station Company agrees as follows:

"The present practice of granting Saturday afternoon off in a given office or department where it is the practice to let employes off for a portion of the eight-hour day, and the sick leave allowances extended to **monthly rated employes** will be continued * * *

The carrier's action in denying this claim is contradictory and in direct reverse of the provision and intent of the above quoted rules and Rule 61 of current agreement and as evidence of that fact we show as employes' Exhibit "A" copy of Ticket Agent, Mr. J. W. Reilly's letters of April 11 and 17, 1946, and General Manager, Mr. Frick's letter of April 22, 1946.

tice, a practice which had no fixed standards and which recognized that it was entirely discretionary with, and the prerogative solely of the department head, to determine and decide what allowances should be granted, to whom allowances should be granted, and for what periods of time, within prescribed limitations, such allowances should be granted. Furthermore, as stated above, it was the responsibility of the department head, and his duty insofar as concerned the interests of the Company, to differentiate as between the possible malingerer and others suffering bona fide illness. The practice also gave to the department head the privilege of inquiring into, and satisfying himself as to whether or not an employe was entitled to compensation for time lost, but did not grant to any employe the right or privilege to demand or receive wages for time lost because of illness. The Claimant in this case was not considered as being entitled to payment for January 3, 1946, and, moreover, no claim was made for compensation until the General Chairman's request of April 8, 1946.

From the foregoing it will be noted that the Brotherhood is now, in effect, contending that the Agreement contains a definite sick rule with fixed standards for determining allowances, similar to the rule which was withdrawn when the negotiations and conferences were concluded November 1, 1940. It is evident, therefore, that the employes are attempting to have your Honorable Board write into the Agreement terms which the Agreement does not now contain.

The Carrier respectfully submits, therefore, that the claim of the employe is not supported by the provisions of the applicable Agreement, and should be denied.

III. Under the Railway Labor Act, the National Railroad Adjustment Board, Third Division, is Required to Give Effect to the Said Agreement and to Decide the Present Dispute in Accordance Therewith.

It is respectfully submitted that the National Railroad Adjustment Board, Third Division, is required by the Railway Labor Act to give effect to the said Agreement, which constitutes the applicable Agreement between the parties, and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, sub-Section (i), confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions". The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreement between the parties to it. To grant the claim of the employes in this case would require the Board to disregard the Agreement between the parties thereto, and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take any such action.

CONCLUSION.

The Carrier has established that, under the applicable Agreement, the Claimant is not entitled to the additional compensation claimed.

The Carrier, therefore, respectfully submits that your Honorable Board should dismiss the claim of the employes in this matter.

OPINION OF BOARD: The Agreement under which this dispute arises was entered into November 1, 1940. Rules 53 and 54 of this Agreement provides as follows, so far as here material:

"The present practice of granting * * * sick leave allowances extended to monthly rated employes will be continued."

Claimant is a monthly rated employe and filed this claim for being absent on account of sickness January 3, 1946. Carrier does not claim or show that Claimant was not sick or give any reason for refusing to pay

Claimant for the day she was absent. Carrier contends simply that it may arbitrarily deny the claim if it so elects and that there is nothing in Rules 53 and 54 to the contrary. However, we believe this contention of the Carrier, and its action in this dispute, is contrary to its own statement of the practice existing when the rule was adopted and which practice the rule contemplates will continue. The Carrier states that prior to the date of the Agreement the allowance of sick leave to monthly rated employes was discretionary with the department head upon whom devolved the duty of determining the facts and circumstances in the matter. Discretion in order to operate must be predicated upon some fact or circumstance which will act as a basis for exercising the discretion. Discretion does not mean arbitrary action. Here, there is no showing that the department head determined the facts and circumstances necessary to reach a determination, or to bring into being his discretion. He simply refused the claim. This action, we believe was contrary to the practice which the rule states will be continued.

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 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 Agreement was violated as alleged.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 11th day of June, 1947.