

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

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

**CHICAGO, ST. PAUL, MINNEAPOLIS & OMAHA RAILWAY
COMPANY**

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

(a) That Carrier violated Agreement Rules when it failed and refused to allow Mary Ryan, Clerk, assigned incumbent of Clerical Position 7, rate \$9.20 per day, Minneapolis Local Freight Station office, compensation for January 26, 1948, and

(b) That Carrier shall now reimburse Clerk Ryan, \$9.20 for January 26, 1948, under provisions of Rule 51 of current Rules Agreement, dated and effective July 16, 1926.

EMPLOYEES' STATEMENT OF FACTS: Mary Ryan, with seniority date of January 9, 1936, on Minneapolis Station Class 1 clerical seniority roster, was the assigned incumbent of clerical Position 7, rate \$9.20 per day.

On January 26, 1948 Clerk Ryan had permission to be absent from duty to attend the funeral of her uncle in St. Paul, Minnesota.

Her position was not filled during her absence.

On return to duty January 27, 1948, Clerk Ryan submitted Carrier Form OD 309, request for compensation of \$9.20 for January 26, under provisions of Rule 51.

Clerk Ryan had qualified by length of service under provisions of Rule 51 for this compensation and Carrier having left her position unfilled on January 26 also had qualified her for same.

Agent declined to allow Clerk Ryan's claim, returning Form OD 309 with his letter of January 28, stating in part: "Inasmuch as Rules do not apply, I am returning Form OD 309 and am forced to decline the request."

On appeal, Clerk Ryan's claim has in turn been declined for payment by Superintendent of Twin City Terminal Division and Director of Personnel.

POSITION OF EMPLOYEES: There is in evidence an agreement between the parties bearing effective date of July 16, 1926, from which the following rules thereof read:

provisions of Date Effective (Terminating) Rule 66 and Federal Statutes, by a supervisor nor authorized or designated to make, revise or amend rules or Rules Agreements.

Employees quote in part from letter of Director of Personnel, dated May 19, 1948, in support of foregoing paragraph:

"While I appreciate all that has been said in respect to your position as to the application of Rule 51 and have also reviewed Third Division, National Railroad Adjustment Board Award 195, being one of the earlier awards of the Division, taking into consideration the provisions of Rule 51 as contained in current Clerks' Schedule, I cannot do otherwise than hold to my former position that under language of the rule we must accept the judgment of the supervising officer as to whether the employee is entitled to compensation for time off duty when such claim is based on provisions of the rule or is in line with a condition which might be interpreted as coming within the scope thereof. To do otherwise would nullify that portion of the rule giving such determination to the supervising officer."

Award 195 of this Honorable Board has held to the contrary thereof.

Employees now ask that this Honorable Board sustain claim for Clerk Ryan as outlined in Statement of Claim.

CARRIER'S STATEMENT OF FACTS: Mary Ryan, Clerk, Minneapolis Freight Station, absented herself from duty January 26, 1948, stating as reason therefor that she attended the funeral of an uncle.

Rule 51, clerks' schedule, provides:

"Employees will be granted time off on account sickness or for other good and sufficient reasons, with pay, providing the work is kept up without additional expense to the Railway Company—the supervising officer to be the judge, as follows:

- (a) Employees who on January 1st have been in the service one year and less than two years—one week or six working days.
- (b) Employees who on January 1st have been in the service two years or more—two weeks or twelve working days."

POSITION OF CARRIER: It is the position of the carrier that under the plain language as contained in rule 51, i.e., that the supervising officer is to be the judge as to allowances under provisions thereof, this board has no jurisdiction.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant, Mary Ryan, a Clerk at the Minneapolis station, had permission to be absent from duty on January 26, 1948 to attend the funeral of an uncle in St. Paul, Minnesota. Upon her return to duty on January 27, 1948, Claimant submitted Carrier form OD-309 requesting compensation of \$9.20 for January 26 under provisions of Rule 51, which rule reads as follows:

"Sick Leave—Employees will be granted time off on account sickness or for other good and sufficient reasons, with pay, providing the work is kept up without additional expense to the Railway Company—the supervising officer to be the judge, as follows:

- (a) Employees who on January 1st have been in the service one year and less than two years—one week or six working days.
- (b) Employees who on January 1st have been in the service two years or more—two weeks or twelve working days."

Carrier's Agent declined allowance of the claim for compensation stating in part, "Inasmuch as Rules do not apply, I am returning Form OD 309 and am forced to decline the request." It is clear from the Statement of Facts that Claimant had sufficient service to qualify for consideration under Rule 51 and that no additional payroll expense was incurred by the Carrier on January 26, 1948 for Claimant's position was not filled on that day.

Carrier in its initial submission has argued that under the plain language of Rule 51, i.e., that the supervising officer is to be the judge of allowances under provisions thereof, this Board has no jurisdiction. However, in reply to Employees' submission Carrier argues that employees cannot expect compensation for time not worked under the rule in instances when in the judgment of the supervising officer compensation for time not worked is not justified.

Strangely enough, although the Agreement containing this rule has been effective since 1926 and claims under this rule have been considered by this Board on previous occasions, in Awards 1511, 1512, 1524, and Interpretations to the latter, and Decisions have been issued by the former United States Railroad Labor Board on somewhat similar rules, no Award has been cited to us with respect to the effect to be given the language—the supervising officer to be the judge, as contained in this particular rule.

The awards cited to us more or less concern the matter of how to determine when the work is kept up without additional expense to the Carrier; whether or not the rule applies to Group 2 employees; and whether or not additional expense is incurred when another employee whose position is not filled is assigned to work the position of the absent employee.

We believe that it is obvious that the phrase, "the supervising officer to be the judge" as contained in Rule 51, cannot be ignored nor viewed as ineffectual by this Board in arriving at a decision in this case. Accordingly, assuming an employee qualified by length of service to consideration for compensation for absences the mere existence of two factors, namely (1) the employee being absent and asserting illness or some other reason (as "good and sufficient") to be the cause of absence and (2) his position not being filled on the day of absence, would not require the allowance of a claim for compensation under the rule. In support of this view, we refer to the following language from Interpretation to Award 1524:

"It would be futile to attempt to find language in Rule 51 susceptible of being construed as an agreement that Employees be granted time off with pay without any determining of the factual question whether the cause of absence came within the Rule."

We think it is as equally obvious as the proposition stated above that compensation under the Rule cannot be denied merely because the supervising officer in his sole, uncontrolled judgment refuses to grant the same. Presumably, this rule was arrived at after negotiations between the parties during which demands, offers and counter-demands were made and this rule, as most, was written after mutual concessions and therefore it is a logical conclusion that the rule as finally written was intended to confer some rights upon the employees. To then hold that a supervising officer in his judgment alone with no appeal or review could deny that right would completely nullify the rule. Reasonable men do not contract with such results in mind. Accordingly, we believe that the supervising officer when presented with claims of this nature is bound to exercise judgment which implies that he have a reasonable basis for his action and that that judgment is subject to review by higher officials of the Carrier as well as by this Board in a properly presented case. In the instance case no reason for denial of the compensation was given other than "Rules do not apply", which obviously is tantamount to no reason at all, for it is clear that the rule did have application. If the supervising officer thought that compensation was not justified in declining the claim, it is a fair conclusion to say that he should have indicated in a more specific manner the basis upon which in his judgment the claim should not be allowed.

No further facts have been indicated in the submission of the Carrier as a basis for denial of compensation to Claimant for the absence in question, Carrier seemingly being content to rest its case on the judgment of the supervising officer which for reasons above stated, we consider as having been unreasonably exercised. Accordingly, we hold that a sustaining Award is in order.

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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 30th day of June, 1949.