

Award No. 5166

Docket No. CL-5143

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Adolph E. Wenke, Referee

**PARTIES TO DISPUTE:**

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

**ST. LOUIS SOUTHWESTERN RAILWAY COMPANY**

**ST. LOUIS SOUTHWESTERN RAILWAY COMPANY  
OF TEXAS**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees:

1. That Carrier's action effective on or about February 1, 1949, changing the intent and prior application of Rule 57-1 (Sick Leave) current Agreement effective April 1, 1946 whereby the provisions thereof shall only be extended to the employee when he (or she) personally is sick, was unilateral and violative of Rule 61 (Date effective and Changes) of said Agreement.

2. That B. B. Wilkinson, General Clerk, Superintendent's Office, Tyler, Texas, be allowed compensation at rate of pay attached to his regular position for two days, February 2 and 3, 1949 that he was absent therefrom account death of his father, during which absence the work normally attached to his position was kept up by other employees and without additional cost to the Carrier.

**EMPLOYEES' STATEMENT OF FACTS:** The claimant, Mr. Wilkinson, is an employee of the Carrier as General Clerk in the Superintendent's office at Tyler, Texas. His service dates from May 19, 1922.

February 2, 1949 Mr. Wilkinson's father died and this necessitated his son, claimant, being absent from his work in the office on that date—February 2—to attend to necessary funeral arrangements and on the following date—day of the funeral.

The Carrier blanked Mr. Wilkinson's position during his absence and other employees in the office "kept up", within the meaning of Rule 57-1, the work normally attached to Mr. Wilkinson's position, hence, Carrier was put to no additional expense by reason of the claimant's absence.

On February 15, Mr. Wilkinson was verbally advised by Mr. Debenport, Chief Clerk to Superintendent, that he had received a communication from the Superintendent of Personnel, Mr. F. P. Lee, placing an interpretation of the Carrier's application of Sick Leave Rule 57-1 at variance with past prac-

"There is no rule of the agreement covering the payment of sick benefits. Even so the carrier has over many years paid them. It now elects to discontinue that practice. What it was never under any obligation to do it may discontinue at its will. Numerous awards have been cited by the claimants which hold that a long continued practice is relevant in interpreting doubtful provisions of a contract. These awards are in accord with a well known principle of the common law; but they are not in point here. In this instance there is no ambiguous provision of the contract to interpret; for there is no provision touching the subject at all. If we should sustain this claim, we should be making a contract and this we have no right to do. Our function is to interpret and enforce agreements not to make them."

The Board has also passed on a specific claim that payment should be made under a sick leave rule for time absent due to death in the employee's immediate family. Third Division Awards 3347 to 3352, inclusive, cover claims of this nature. The opinion of Board in Award 3347 contains the following:

"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)."

It was also decided in this award that a previous memorandum of agreement relating to payment of a maximum of three days under sick leave rule when employees were absent due to death in family related only to cases pending at the time the memorandum of agreement was made, and did not alter the sick leave rule nor require similar payment in the future.

Thus it appears that awards of the Board do not support the claim. The facts previously pointed out show the provisions of the rule involved, the history of the rule, and its application. The Carrier respectfully submits these facts show that interpreting Rule 57 to include absence for personal reasons in addition to absence because of being sick, would definitely enlarge the rule beyond the limits agreed upon. Under the Railway Labor Act that would be a matter to be handled by negotiations and agreement.

The Carrier respectfully submits that the claim is not supported by the rules nor justified for any reason, and requests that the claim be denied.

(Exhibits not reproduced.)

**OPINION OF BOARD:** The System Committee of the Brotherhood makes this claim for compensation in behalf of B. B. Wilkinson, General Clerk, Superintendent's Office, Tyler, Texas. It asks that he be paid at the rate of his regular position for two days, February 2, 3, 1949, when he was absent from work due to the death of his father.

Claimant's father died on February 2, 1949 and claimant did not report for duty on February 2, 3, 1949, because thereof. During his absence his position was not filled and the work he normally performed, and which was attached to his position, was kept up by other employees without additional cost to the Carrier.

Rule 57-1 of the parties' effective Agreement, so far as here material, provides as follows: "When the work of an employee is kept up by other employees without additional cost to the Carrier, an employee \* \* \* will not have deduction made from his pay for time absent on account of a bona fide case of sickness \* \* \*."

The question is, does this rule apply only when the employee is absent because he or she is sick or does it apply whenever an employee is absent

because of sickness or death in his immediate family or of some other close relative? It would appear that in the past Carrier has allowed and paid many claims on the latter basis.

Rules of an Agreement relate to the employees covered thereby unless otherwise expressly provided. Rule 57 relates to a specific subject and clearly covers only when absence is due to sickness of the employee claiming the benefit thereof.

Past practices under a rule on a specific subject that is clear and unambiguous does not change the rule itself, and either Carrier can enforce or employees can require Carrier to enforce it according to its terms. That is what Carrier is now seeking to do. We find no violation by the Carrier as here claimed.

**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 has not violated the Agreement.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: A. I. Tummon  
Acting Secretary

Dated at Chicago, Illinois, this 20th day of December, 1950.