

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**

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

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

(a) Carrier violated Rule 66 of the Clerks' Agreement when it declined and continues to decline to allow Mr. Hubert D. Devlin, Roadmaster's Clerk, Ogden, Utah, compensation for one (1) day, time lost account of illness, June 17, 1948;

(b) Mr. Hubert D. Devlin shall now be allowed one (1) day's compensation at the rate of his assigned position, June 17, 1948, which date he was absent account illness.

JOINT STATEMENT OF FACTS: 1. There is in evidence an agreement between the carrier and its employees represented by the petitioner, bearing an effective date of October 1, 1940, which agreement (hereinafter referred to as the agreement) was in effect on the date involved in the instant claim. A copy of the agreement is on file with the Board and is hereby made a part of this dispute.

2. On July 2, 1941, Hubert D. Devlin (hereinafter referred to as the claimant) entered the service of the Carrier at Ogden, Utah, as a Machine Operator-Messenger, and in accordance with the provisions of Rule 26 of the Agreement established said date as his seniority on Clerks' Roster No. 1 of the seniority district on the Salt Lake Division.

"Rule 26.

(a) Seniority begins at the time employee's pay starts on the seniority district and on the roster where service is first performed. Where two or more employees enter upon their duties at the same hour on the same day, the employing officer shall at that time, designate the respective rank of such employees.

(b) An employee voluntarily leaving the service or who has absented himself, except in case of illness or other physical disability, without proper leave of absence, which must be in writing if in excess of thirty (30) days, shall forfeit his accumulated seniority; if he re-enters the service shall be considered a new employee. An employee who has been dismissed and request for

Carrier submits that it should be obvious to this Board that the provision of Rule 66, requiring one year's continuous service for six days' sick leave, was clearly intended to apply to service rendered immediately prior to the date of absence on account of illness. Carrier asserts such is the manner in which that provision of Rule 66 has always been interpreted and applied on the property. In support of that assertion, there is attached hereto as Carrier's Exhibit "B", Sheets 1 to 4, inclusive, copies of correspondence in settlement between the petitioner and this carrier, covered by petitioner's file TU-2787, Co. file CLKS 181-111, involving the claim of a clerk with seniority date of July 29, 1916, for three days' compensation, December 4 to 7, inclusive, 1940, under provisions of Rule 66, current agreement.

Sheet 1 of Carrier's Exhibit "B" is a copy of a letter dated March 15, 1941, addressed by carrier's assistant manager of personnel to petitioner's general chairman, formally declining the claim outlined in the preceding paragraph. The attention of this Division is directed to the following excerpt taken from the last paragraph of that letter:

"Rule 66 of the Agreement requires that an employe must have been in continuous service of the Carrier at least one year before being entitled to any payment for sick leave; it was never contemplated that an employe could or would be allowed to take a leave of absence and engage in outside occupation and immediately upon return therefrom, be accorded compensation under the provisions of that rule." (Emphasis supplied.)

The claim was discussed in conference on May 27, 1941, following which on May 31, 1941, Sheet 2 of Exhibit "B", the assistant manager of personnel affirmed the previous denial. On August 2, 1941, Sheet 3 of Exhibit "B", the assistant manager of personnel requested of the general chairman advice as to whether or not his letter of May 31st had disposed of the claim. It will be noted from the general chairman's reply of August 6, 1941, Sheet 4 of Exhibit "B", that he advised the assistant manager of personnel he could close his file. While the file was closed by the general chairman without prejudice to the petitioner's contentions, the last paragraph of the assistant manager of personnel's letter of March 15, 1941, definitely established that it was not the policy of the carrier to grant sick leave compensation where the continuity of service had been broken by a leave of absence. In this settlement, the claimant had been in continuous service approximately 24 years at the time he took a six-months leave of absence, yet his request for 3 days' sick leave compensation was declined and the decision upheld.

Applying the decision contained in the carrier's Exhibit "B" to the instant claim, since the claimant had not been in continuous service of the carrier for one year immediately preceding the date on which he was absent account illness, his claim for one day's compensation for June 17, 1948, was properly denied by the carrier in accordance with that decision and Rule 66 of the agreement.

In conclusion, carrier asserts that it has conclusively proven that the claimant in this docket was not in the continuous service of the carrier for one year, as contemplated by the provisions of Rule 66 of the agreement, and that, as a consequence thereof, the instant claim is entirely lacking in merit and agreement support and should be denied by this Board.

(Exhibits not reproduced.)

OPINION OF BOARD: The System Committee of the Brotherhood claims Carrier violated Rule 66 of the Clerks' Agreement when it refused to pay Hubert D. Devlin, Roadmaster's Clerk, for one day's time lost on account of being absent from work because of illness. It asks that he be compensated for that day, June 17, 1948, at the rate of his position.

Claimant entered the service of Carrier on July 2, 1941 and continued therein until November 18, 1942 when he entered the military service of his country. He was honorably discharged from his military status on January 10, 1946 and returned to the services of the Carrier on March 4, 1946. He remained therein until September 15, 1946 when he was granted a leave of absence to attend school under the Servicemen's Readjustment Act of 1944. He returned to service from this leave of absence on July 22, 1947. This status continued and existed on the date for which claim is made.

The question presented by the claim is, was claimant, on June 17, 1948 when he was admittedly absent from work because of illness, eligible to the benefits of Rule 66 of the parties' agreement?

Rule 66, insofar as here material, provided: "* * * a clerk who has been in the continuous service of the carrier one year and less than two years, will not have deduction made from his pay for time absent on account of a bona-fide case of sickness until he has been absent six (6) working days in the calendar year;".

This rule presupposes that the clerk must be working at the time the sickness occurs for which claim is made as it provides he "will not have deduction made from his pay for time absent on account of a bona-fide case of sickness * * *." Service means the performance of labor for the benefit of another. Continuous means without break or interruption. See Webster's New International Dictionary, Second Edition. As used in Rule 66 of the parties' agreement "continuous service" means the performance of labor for the benefit of the Carrier without break or interruption in the sense that the employe will perform, from day to day, the work as it is assigned to him.

Here the claimant has continuously sustained an employment status with the Carrier since July 2, 1941 but has not always performed services during that time as he was absent from November 18, 1942 to March 4, 1946, because of his being in the military service of his country, and again from September 15, 1946 to July 22, 1947, while on leave to attend school under the provisions of the Servicemen's Readjustment Act of 1944. As a result he was not in continuous service for one year immediately preceding June 17, 1948 but had been in continuous service for more than one year from July 2, 1941 to November 18, 1942.

As to the Carrier's contention that the provision in the rule as to continuous service should relate to the period immediately preceding the date of the claim we cannot agree. The rule does not so provide and it is not our prerogative to rewrite it. We must interpret the rule as we find it and if clear and unambiguous, which we think it is, apply it according to its terms regardless of how the Carrier may have applied it on the property.

We think it is sufficient if a clerk has performed continuous service within the requirements of Rule 66 at any time during his employment by the Carrier as long as he retains an employment status with the Carrier subsequent thereto which is continuous up to the date of claim. In view of the foregoing we find the claim here made should be sustained.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That both parties to this dispute waived oral hearing thereon;

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 Carrier has 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 25th day of January, 1951.