

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Hubert Wyckoff, Referee

PARTIES TO DISPUTE:

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

**CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD
COMPANY**

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

That P. A. Diehl, Clerk, Local Freight Offices, Des Moines, Iowa, seniority date August 23, 1915, be paid for six (6) working days while absent from duty (July 15, 16, 18, 19, 20 and 21, 1949) account of sickness, at the rate of \$264.67 per month.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an Agreement between the parties to this dispute, bearing an effective date of August 2, 1945.

On July 14, 1949, Mr. P. A. Diehl, Switching Clerk, rate \$264.67 per month, employed in the Local Freight Office, Des Moines, Iowa, became very ill and as a result of this illness was taken to the Hospital for an operation. He lost time from his assignment from July 15, 1949, to August 25, 1949. While away from his position account sickness, the management filled the position by assigning another employe, and did not allow Mr. Diehl pay for time off account sickness.

It has been the practice in the Local Freight Office, Des Moines, Iowa, to allow Clerks pay for six (6) days when off account sickness.

POSITION OF EMPLOYES: Rule 76, in effect July, 1949, reads as follows:

"Rule 76—Sick Leave and Saturday Afternoons. The present practice of allowing time to employes off account sickness and Saturday afternoon relief will remain in effect, and where conditions justify the practice will be extended."

For the benefit of the record, we quote letters and rules as they have applied to sickness over a period of years.

Agreement of August 1, 1922, was silent on sickness; however, on July 26, 1922, the Carrier addressed the following letter to General Chairman J. Y. McLean:

correct interpretation. That interpretation which gives a reasonable meaning to and permits of a harmonious interpretation of all provisions of the agreement is to be preferred to one which leaves a portion useless or inexplicable. We maintain that Rule 76 must be read and interpreted by giving effect to other provisions of the agreement such as Rules 64 and 67, as well as the "practice," if any, within meaning of Rule 76. Certainly the controlling meaning of Rule 76 is that which flows when it is considered in its co-relationship with other parts of the agreement and not that which may result from rule 76 when considered separate and apart from the remainder of the rules in the agreement.

OPINION OF BOARD: The claim is for 6 days' pay under Rule 76 which reads:

"Rule 76. Sick Leave and Saturday Afternoons. The present practice of allowing time to employes off account sickness and Saturday afternoon relief will remain in effect, and where conditions justify the practice will be extended."

The practice was not uniform over the system. We are concerned only with what the practice was at the Des Moines Freight Office. The Carrier admits that there was a practice in this office to pay not to exceed 6 days' sick leave when the work of the position was kept up by other employes in the office without expense to the Carrier. Claimant was sick more than 6 days, but his position was filled by the assignment of another employee. Hence the dispute.

There were sick leave practices as early as at least 1922. Rule 76 first came into the Agreement in 1931. Rule 67 provided:

"Employes temporarily or permanently assigned to a higher rate position will receive the higher rate for that position only during the time such salary is not carried on the payroll for regularly assigned employes."

This Rule gave the Carrier a right to continue paying the sick employe and to arrange for the performance of his work by the remaining force without additional cost to the Carrier.

On October 31, 1928 the Organization proposed a Rule which read as follows:

"In the case of absence on account of sickness employes will not be docked, provided the work is kept up by others without additional cost to the Company."

This proposal was not adopted. And after Rule 76 was adopted in 1931, the General Chairman of the Organization issued an Explanatory Memorandum to the employes represented by him, saying about "New Rule 76":

"SICK LEAVE WITHOUT DEDUCTION IN PAY: . . . In discussing this subject during rules revision conferences, it was felt that an effort should be made by the local officers and the employes to so handle the work, whenever possible, to permit payment of regular wages for a reasonable length of time to employes off account sickness. . . ."

What the practice has been under the Rule in other localities is shown by data in the record concerning Kansas City and Eldon during 1946-1947, by a decision in 1932 of "Clerks' Board of Adjustment" concerning Memphis and by Award 520 of this Division in 1937 concerning the La Salle Street Station in Chicago.

With respect to the practice in Des Moines, the record shows only 6 cases in 1948-1949, all of which were cases where sick leave was paid for 6 days or less and in two of which the position was filled.

FIRST: The parties have not laid down any hard-and-fast Rule. There was, on the contrary, a plain intention not to disturb local practices and to leave flexibility for local handling.

The general pattern appears to be 6 days' sick leave with the other employees performing the sick employee's work wherever possible. Exceptions have been recognized both as to leave in excess of 6 days and also as to payment when the sick employee's position has been filled.

Apparently, in accordance with the General Chairman's 1931 Explanatory Memorandum, the work of the sick employee has most often been handled by other employees in the office, except in cases where this was not feasible by reason of the nature or volume of the work. The failure of the parties to adopt the Organization's 1928 proposal is some indication that no express prohibition against payment was intended in cases where it might become necessary to fill the position; and there are recorded instances of such payments.

Whenever exceptions have been made, exceptional length of service has been a determining factor.

SECOND. There is no recorded instance before us of sick leave at Des Moines in excess of the general 6-day pattern; and the claim is so limited.

There are four recorded cases where payment was made, in accordance with the general pattern, when other employees in the office performed the work of the sick employee. And there are two recorded cases where payment was made when the sick employee's position was filled.

The integrity of the general understanding evidenced by the General Chairman's 1931 Explanatory Memorandum required a corresponding effort on the part of the Carrier not to fill the sick employee's position arbitrarily. The record shows that conditions at the time of Claimant's sickness were such that the work of his position could not be taken care of by other employees in the office.

It follows that the claim should be denied unless the two payments which were made in Des Moines were based upon considerations of exceptional length of service. If they were, the claim should be allowed. The record does not disclose what the fact is, but the parties should be able to ascertain it readily.

It has been suggested by the Carrier that the Rule does not authorize consideration of length of service; but neither does it limit sick leave to 6 days nor does it forbid exceptions to the general practice when the position is filled. If the Rule is loose, it was written that way.

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 existing practice under Rule 76 at Des Moines Freight Office is as stated in the foregoing Opinion.

AWARD

Claim sustained if, upon consideration of length of service, payment of regular wages was made during sick leave to C. A. Armintrout, Assistant Chief Clerk Claims, during June 1948 or to W. G. Ambos, Rate Clerk, during January, February or March 1948, while their positions were filled; otherwise claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 30th day of March, 1951.