

Award No. 14102
Docket No. CL-13813

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Daniel House, Referee

PARTIES TO DISPUTE:

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

HOUSTON BELT & TERMINAL RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5277) that:

1. The Carrier violated the Clerks' Agreement when it refused to pay Mrs. Evelyn Hartman, Assistant Rate Clerk at Crawford Street Freight Station, Houston, Texas, for one day's time lost account personal illness on October 31, 1961.

2. The Carrier shall now be required to pay Mrs. Evelyn Hartman one day's pay at \$20.35 per day for October 31, 1961.

EMPLOYEES' STATEMENT OF FACTS: Mrs. Evelyn Hartman is employed as Assistant Rate Clerk at the Crawford Street Freight Station, Houston, Texas, and has a seniority date of September 7, 1948 with the Houston Belt and Terminal Railway.

On October 31, 1961 Mrs. Evelyn Hartman was absent from work account personal illness and was qualified for sick leave pay under Rule 57.

The position of Assistant Rate Clerk No. 162 was not filled on October 31, 1961, nor was overtime performed on this particular position due to Mrs. Hartman's absence on this date.

The Crawford Street Freight Station is a two story building. The Rate Department is located on the first floor.

Although Mrs. Hartman's position is a Rate Department position, for convenience to her particular duties of making waybill corrections she performs her duties in the office of the Accounting Department located on the second floor. Her time worked is kept by the Chief Accountant.

On November 5, 1961 claim was filed on behalf of Mrs. Evelyn Hartman account not allowed sick day pay for October 31, 1961. Employees' Exhibit No. 1.

It seems clear that the display of such an attitude by these clerks, followed by the filing of such a claim, evinces a complete misunderstanding of or, perhaps more properly stated, disregard for, the spirit and intention of Rule 57.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant was absent from work on October 31, 1961, on account of personal illness. The duties of her position as well as the duties of the other positions in her department were in arrears prior to and after her absence. None of the duties of her position were performed on the day of her illness; on her return to work on the following day she continued to perform the duties from where she had left off before her illness.

Employees argue that in consonance with Third Division Awards Nos. 2981, 4517 and 6606 referred to in Employees' Ex Parte Submission and "on the basis that the work was kept up without additional cost to Carrier as contemplated in Rule 57," Carrier in failing to pay Claimant for the day she lost on account of her personal illness violated the Agreement.

In each of the above-mentioned awards, as well as in Third Division Award No. 13216, the latest award cited to the Referee in support of Employees' position, the decision of the Board was based on, among other findings, a finding that the work of Claimant's position in each case had been kept up. The evidence in this record fails to prove that the work was kept up; simply to get the case off the ground it was Employees' burden to supply evidence to support their assertion that the work was kept up. It is thus not necessary for us to proceed to a discussion and ruling on the other arguments presented in connection with this dispute. We will deny the claim.

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

That the parties waived oral hearing;

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of January 1966.