

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Edward A. Lynch, Referee

PARTIES TO DISPUTE:

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

**THE NORTHERN PACIFIC TERMINAL COMPANY
OF OREGON**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5061) that:

(1) The Carrier violated the terms of the Clerks' Agreement when it failed and refused to allow Clerk Mildred O'Kief 10 days' sick-leave pay for 10 work days in the period January 3 through 16, 1961, namely, January 3, 4, 5, 6, 9, 10, 11, 12, 13 and 16, 1961, and,

(2) Carrier further violated the Agreement when it failed to notify Claimant's representative of its declination within 60 days from the date the claim was appealed.

(3) Carrier shall now be required to compensate Mildred O'Kief 10 days' pay at the rate of \$19.90 per day for the days enumerated in (1) above.

EMPLOYEES' STATEMENT OF FACTS: Claimant Mildred O'Kief is regularly assigned to Car Clerk Job No. 416 in Carrier's Yard Office with rest days of Saturday and Sunday and rate of pay of \$19.90 per day. She has been in the service of the Carrier since January 13, 1955.

Claimant has been unable to work since November 29, 1960, because of hypertension and exhaustion. She has been under the care of Dr. Morrison, who is a Company doctor on the staff of the Northern Pacific Terminal Hospital Department. Claimant filed time card claim for 10 days' sick-leave for the period January 3 through January 16, 1961, excluding the four rest days, with Personnel Manager H. H. Arey. In a letter to Claimant under date of January 20, 1961, Personnel Manager Arey declined payment of the claim.

Claimant referred the claim to the General Chairman, who, on February 1, 1961, appealed the claim by letter to Manager J. H. Jones. A copy of said letter was furnished Personnel Manager Arey with notification that his decision was rejected.

9. Conference was held on June 6, 1961, when this claim was discussed, and on July 14, 1961, Carrier again advised Petitioner that the claim was declined.

Petitioner replied thereto on July 24, 1961.

Carrier made reply under date of August 21, 1961.

OPINION OF BOARD: Rule 42 provides that:

“(a) . . . Should . . . claim or grievance be disallowed, the Carrier shall, within 60 days from the date same is filed, notify whoever filed the claim or grievance . . . in writing of the reasons for such disallowance. If not so notified, the claim or grievance shall be allowed as presented, . . .”

The parties here apparently agree that April 2, 1961 was the 60th and last day for disallowance of the claim by Carrier's manager in order to comply with the time limit provisions of Rule 42, Section 1. The Manager's letter disallowing the claim bore the date of April 2, but in his letter appealing the claim to the Manager, the General Chairman stated:

“ . . . the letter did not leave your office until sometime during the afternoon of April 4 . . .”

The manager did not deny this statement in his reply to the General Chairman and it does not appear from the record that the statement was ever denied during handling on the property. The claim must, therefore, be allowed in accordance with the provision of Rule 42.

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 violated.

AWARD

Claim sustained in accordance with Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 29th day of April 1966.

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