

Award No. 16478
Docket No. CL-17032

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

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

HARBOR BELT LINE RAILROAD

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6294) that:

(a) Carrier violated the current agreement when it refused to allow Mr. A. E. Wickwar sick leave compensation for March 31, 1966.

(b) Carrier shall now be required to allow Mr. A. E. Wickwar eight (8) hours compensation at the applicable pro rata rate of his position No. 605, Car Runner, for March 31, 1966.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an Agreement bearing effective date of May 1, 1957 (hereinafter referred to as the Agreement) between the Harbor Belt Line Railroad (hereinafter referred to as the Carrier) and its employees represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees (hereinafter referred to as the Employees) which Agreement is on file with this Board and by reference thereto is hereby made a part of this dispute.

At the time circumstances forming the basis for this claim arose, Mr. A. E. Wickwar (hereinafter referred to as the Claimant) was the regularly assigned incumbent of Position No. 605, Car Runner, rate of pay \$23.65 per day. His seniority date on the Car Runners and Check Clerks Roster—one of two seniority rosters covering the clerical employees—is December 30, 1922.

Due to personal illness, it was necessary for Claimant to be absent from his assignment on March 22, 30, 31 and April 1, 1966, and he claimed compensation for these four dates in accordance with provisions of Rule 47 of the Agreement. Carrier compensated him for three of the days of illness, but in referring to the fourth, advised:

"Your claim for 8 hours, March 31, 1966, Position 605, account illness, is declined in view of the fact that the position was relieved; see rule 47."

CARRIER EXHIBIT G - Carrier's letter dated June 22, 1966 acknowledging General Chairman's letter and agreeing to conference.

CARRIER EXHIBIT H - Carrier's letter dated July 7, 1966 confirming conference held July 6, 1966 and declining the claim.

CARRIER EXHIBIT I - BRSC Division Chairman Chaney's letter dated July 11, 1966, acknowledging the Carrier's letter of July 7, 1966, confirming conference held July 6, 1966, also stating that the claim could not be concluded locally and their intent to remand it to the General Chairman.

CARRIER EXHIBIT J - Agreement dated March 14, 1967 between the parties that the 9 month's time limit would be extended to July 31, 1967.

(Exhibits not reproduced.)

OPINION OF BOARD: Due to personal illness it was necessary for Claimant to be absent from his assignment on March 22, 30, 31 and April 1, 1966. He claimed compensation for the four days. Carrier compensated him for three of the days; but, as to the fourth, it advised him:

"Your claim for 8 hours, March 31, 1966, Position 605, account illness, is declined in view of the fact that the position was relieved; see rule 47."

In a letter dated April 13, 1966, the denial of the day's pay was appealed to Carrier's General Manager. The letter set out the facts and the Employees' position and contentions. On April 21, 1966, the General Manager denied the appeal:

"This will confirm understanding reached in conference on April 19, 1966, regarding claim filed by the Organization on behalf of Clerk A. E. Wickwar, which I have declined for the reasons stated to you and also in view of the statement of fact contained in your letter of April 13, file HBL 47-(1)."

Then, on April 26, 1966, Employees appealed to the highest officer designated by Carrier to handle such disputes. In the appeal Employees, *inter alia*, averred that the General Manager had failed to give in writing his reasons for disallowance of the claim as required by Article V 1(a) and (c) of the August 21, 1954 Agreement; therefore, that Agreement mandated that the claim "shall be allowed as presented." In his denial the highest officer did not respond to this demand.

We find that the General Manager's denial under date of April 21, 1966, did set forth in writing the reasons for the disallowance as required by Article V. 1 (a) and (c) of the August 21, 1954 Agreement. Consequently, Carrier by its failure to allow the claim "as presented" violated the Agreement. We, therefore, are compelled to sustain the claim as presented without consideration of the merits.

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 Carrier violated the Agreement.

AWARD

Claim sustained as presented.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of July 1968.