

 Award No. 16535  
Docket No. CL-17132

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**(Supplemental)**

John J. McGovern, Referee

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF RAILWAY, AIRLINE 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 (GL-6252) that:

(a) The Southern Pacific Company violated the current Clerks Agreement between the parties when it failed and refused to allow Mr. F. G. Gruber eight (8) hours sick pay for each date January 1, 4, 5, 6, 7, 8, 11, 12, 13 and 14, 1965; and,

(b) The Southern Pacific Company shall now be required to allow Mr. F. G. Gruber eight hours compensation at the pro rata rate of his assignment, Assistant Chief Clerk No. 11, \$23.2424 per day, for each date January 1, 4, 5, 6, 7, 8, 11, 12, 13 and 14, 1965.

**EMPLOYEES' STATEMENT OF FACTS:**

There is in evidence an Agreement bearing effective date October 1, 1940, reprinted May 2, 1955, including subsequent revisions, (hereinafter referred to as the Agreement) between the Southern Pacific Company (Pacific Lines) (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.

Mr. F. G. Gruber, hereinafter referred to as the Claimant, entered Carrier's service on April 13, 1943. On November 30, 1964, while assigned to Assistant Chief Clerk Position No. 11, rate \$23.2424 per day, he became ill and was off duty account illness until released for duty effective January 16, 1965. Claimant decided to take his vacation beginning January 18, 1965, and returned to service at the conclusion thereof.

Claimant filed time card claim for sick leave compensation January 1 through January 14, 1965. The claim was denied by Superintendent J. H. Long for reason that,

Rule 66 of the current agreement. Subsequently, claimant was granted sick leave commencing November 30, 1964, took vacation commencing January 18, 1965 and returned to service on February 14, 1965.

No payment was made by Carrier in connection with claimant's absence account illness commencing November 30, 1964; however, for the month of December 1964 claimant filed for sickness benefits under provisions of the Railroad Unemployment Insurance Act, and received compensation from the Railroad Retirement Board amounting to \$10.20 per day for each day of eligibility.

3. For portion of his absence in January 1965, claimant submitted a semi-monthly time card to Carrier claiming 8 hours compensation at the pro rata rate of Position No. 11, Assistant Chief Clerk, for each date, January 1, 4, 5, 6, 7, 8, 11, 12, 13 and 14, 1965, based on the premise that he became eligible for 10 days' sick leave compensation for the calendar year 1965 under provisions of Rule 66.

4. By letter dated January 22, 1965 (Carrier's Exhibit A), Carrier's Division Superintendent advised claimant that his claim was denied.

By letter dated February 4, 1965 (Carrier's Exhibit B), Petitioner's Division Chairman appealed the claim in behalf of claimant to Carrier's Division Superintendent, contending that Carrier was "obligated" to compensate claimant for sick leave allowance for the ten days claimed in January 1965 on the basis that claimant's "continuity of service was not severed by his absence from November 30, 1964 through January 16, 1965." By letter dated March 5, 1965 (Carrier's Exhibit C), Carrier's Division Superintendent denied the claim in view of the fact claimant had not performed any service in the calendar year for which sick allowance was requested. By letter dated March 9, 1965 (Carrier's Exhibit D), Petitioner's Division Chairman advised that the claim would be appealed further.

By letter dated May 3, 1965 (Carrier's Exhibit E), Petitioner's General Chairman appealed the claim in behalf of claimant to Carrier's Assistant Manager of Personnel and by letter dated November 23, 1966 (Carrier's Exhibit F), the latter denied the claim.

(Exhibits not reproduced.)

**OPINION OF BOARD:** Claimant was ill during September 1964 for a period of ten (10) days, during which, in accord with the provisions of Rule 66, no deductions were made from his paycheck. On November 30, 1964, he once again became ill, this illness continuing into January of 1965. Since he had used his total sickness benefits of 10 days in September, he was not paid for the remaining days in 1964, being carried in the books as simply absent due to sickness. This status continued into the next calendar year and he has submitted a claim for 10 days in 1965 based on Rule 66, which reads

#### **"RULE 66. SICK LEAVE**

An employe 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 the time absent on account of a bona fide case of sickness until he has been absent five (5) working days in the calendar year; an employe who has been in continuous service for two years and less than three years, seven and one-half (7½) working days. An employe who has been in continuous service three years or longer, ten (10)

working days. Deductions will be made beyond the time allowance specified above."

The evidence of record indicates that Claimant has been in the service of Carrier since April 13, 1943.

Carrier refers us to Award 5201, wherein a claim for a day's illness was sustained on the grounds that "continuous service" as envisioned by Rule 66 meant to include a continuation of an employment status rather than delimiting it to the one year rule prior to the date upon which a claim was based. We agree with that interpretation of the rule and apply it to this case. Carrier however arguendo states that the afore-cited award also established the principle that the Claimant must actually be working at the time of illness in order to qualify for sick pay, and refers us to the following quote from that award:

"This rule pre-supposes that the claim 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'."

As we analyze the above cited language, since the decision in that case was rendered on other grounds, we must characterize it as "obiter dicta" and hence of no binding force and effect in our judgement. The rule upon which the claim is based is clear and unambiguous. There is no question that the Claimant was in the continuous service of the Carrier, as was evidenced later by granting of his vacation with pay and subsequent return to duty status. Carrier has candidly admitted this interpretation as being correct when it stated that if an employee was ill the last few days of a given year and his illness continued for a few days into the next year, they would not deduct from his pay. To submit that a man, employed from 1943 to 1964 is not considered as being "in continuous service" of the Carrier as envisioned by the rule, is a proposition to which we cannot subscribe. We will sustain 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 violated by the Carrier.

#### AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of August 1968.

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