

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John J. McGovern, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION

CENTRAL OF GEORGIA RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Central of Georgia Railway, that:

1. Carrier violated the terms of the parties' Agreement when it failed and refused to allow Mr. J. C. Pate, Jr., regular occupant swing clerk operator-ticket agent position, Opelika, Alabama, sick leave pay for February 16 and March 4, 1964.

2. Carrier shall, because of the violations set out above, compensate Mr. J. C. Pate, Jr., one (1) day sick leave allowance at the rate of his position occupied for each date, February 16 and March 4, 1964.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an Agreement by and between the Central of Georgia Railway Company, hereinafter referred to as Carrier, and its employees in station, tower and telegraph service, hereinafter referred to as Employees, represented by Transportation-Communication Employees Union, hereinafter referred to as Union, effective October 31, 1959, and as amended and supplemented. Copies of said Agreements are available to your Board, and are, by this reference, made a part hereof.

An analysis of the facts of record show the following: Mr. J. C. Pate, Jr., hereinafter referred to as Claimant, was, on the dates involved in this claim, the regularly assigned occupant of Relief Swing Clerk Operator Ticket-Agent's position at Opelika, Alabama. He became an employee of Carrier, subject to all of the rules of the parties' Agreement, on March 3, 1948.

On the last half of February 1964 payroll, Claimant included therein a day's pay for February 16, 1964 as sick leave allowance pursuant to Rule 9 — Sick Leave. Upon receipt of his checks for the period covered, Claimant found that he was short in the amount of \$22.35 for February 16, 1964. On March 18, 1964, Claimant addressed a letter to Manager of Payroll Accounting, making inquiry as to why the amount indicated had been deleted from his paycheck. Copy of said letter attached as T. C. U. Exhibit 1. On March 19,

until his return to duty on Monday, March 2, 1964, and in the interim used every day of sick leave to which entitled.

The Brotherhood says that Mr. Pate is entitled to be paid March 4, 1964, under the sick leave rule presumably, but has produced no evidence whatsoever to substantiate their assertions. Carrier is certainly not willing in this case to extend the sick leave allowed beyond the specific number of days permitted under the rule.

Since neither the effective rules agreement, interpretations through the years, nor practice, substantiate this baseless claim, the claim remains declined in its entirety." (Emphasis ours.)

A conference for December 21, 1964, was mutually arranged by Director of Personnel Tolleson with General Chairman Hardison. The subject claim for 8 hours' sick leave pay for Mr. J. C. Pate, Jr. for March 4, 1964 was fully discussed, and previous declination reaffirmed. The claim for February 16, 1964, was obviously dropped by the Organization — it was **not appealed to the Director of Personnel**.

The Organization has failed in all handlings on the property to cite a rule, interpretation or practice which gives them what they are here demanding. Not knowing of any rule, interpretation or practice that has been violated in any manner whatsoever, the Carrier has denied the claim at each and every stage of handling on the property. The claim has absolutely no semblance of merit. It is a claim involving all-to-gain-and-nothing-to-lose . . . pure and simple. It is unfortunate that Mr. Pate has, through the years, used up all of his sick leave, and it is unfortunate that he suffered at least two heart attacks (according to our information), but the rule just does not require the unearned pay here demanded.

The rules and working conditions agreement between the parties is effective October 31, 1959, as amended. Copies are on file with your Board, and the agreement, as amended, is hereby made a part of this dispute as though reproduced herein word for word.

OPINION OF BOARD: The parties, the issue and the rule cited in the contract are identical to those contained in our Award 16591. The only difference between the two is that the claim in the former was for (4) days' sick leave, whereas the claim in the instant case is for (2) two days' sick leave.

A review of the handling of this case on the property reveals that the original claim was for (2) days' sick leave, February 16, 1964 and March 4, 1964. The correspondence exchanged between the parties refers to two days' sick leave up to the August 25, 1964 letter from the Vice President Operations of the Carrier to the General Chairman, wherein only one day sick leave is mentioned, although reference is made to the June 29, 1964 letter from the General Chairman to the Vice-President Operations, in which 2 days' sick leave were mentioned. Thereafter, the exchange of correspondence between the parties is restricted to a discussion of one day's sick leave. Correspondence from both sides omits mention of the February 16th claim. There is nothing contained in the evidence which would lead us to believe that the Organization meant to include both days as one claim. We reiterate that the letters exchanged up to and including the highest officer of Appeal, subsequent to the

June 29th letter, is limited to March 4th and the demand is for 1 day's sick leave, not two days.

As we view this record, we are left with no alternative other than to deny the 1 day's sick leave for February 16th, on the grounds that it was not handled in the usual manner by appeal to the highest officer of the Carrier. It is therefore procedurally defective.

For the very reasons we sustained the claim in our Award 16591, we will sustain the claim for March 4th.

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 Employee 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 in accordance with Opinion.

AWARD

February 16th claim denied.

March 4th claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of September 1968.