



Award No. 18587
Docket No. CL-18986

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

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

**BURLINGTON NORTHERN INC.
(Formerly Great Northern Railway Company)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6837) that:

(1) The Carrier violated the rules of the existing agreements when on January 1, 1969, it denied Frances M. Tomczik, Stenographer at St. Cloud Shops, St. Cloud, Minnesota, her holiday pay.

(2) The Carrier shall now be required to pay Frances M. Tomczik 8 hours' holiday pay for Wednesday, January 1, 1969, new Year's Day.

EMPLOYES' STATEMENT OF FACTS: Mrs. Tomczik is a Stenographer working at the St. Cloud Shops, St. Cloud, Minnesota, holding a regular five-day position Monday through Friday, with Saturday and Sunday as rest.

On December 29, 1968, Mrs. Tomczik's grandfather passed away and was buried on January 2, 1969. As a consequence, she asked for and received compassionate leave for December 29 and 30, 1968, and January 2, 1969. For these three days she was paid her daily rate under the Compassionate Leave Rule. Subsequent thereto she requested holiday pay for New Year's Day, Wednesday, January 1, 1969, which was denied by the Carrier under date of January 7, 1969, and such denial reads as follows:

"St. Cloud Shops
St. Cloud, Minnesota
January 7, 1969

File 304

Frances M. Tomczik
St. Cloud Shops

“. . . At said conference it was agreed:

- “1. Claim pending as of March 3, 1970, which have been appealed to and declined by the highest designated officer prior to March 3, 1970 — the period of time within which to institute proceedings in such claims before the appropriate division of the National Railroad Adjustment Board or other tribunal having jurisdiction under the Railway Labor Act, is hereby extended to December 31, 1970.”

The parties met in conference frequently in an attempt to resolve the dispute, without success. We are therefore submitting the issue to your Honorable Board for your decision.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: The claimant in this case was regularly assigned to a position of stenographer at St. Cloud Shops at the time the instant claim arose. Due to the death of her grandfather on December 29, 1968, and the request of her grandmother that she handle all funeral arrangements, she was absent from work with permission on December 30 and 31, 1968, and January 2, 1969, and of course performed no service on New Year's Day, January 1, 1969.

Claimant was allowed three days' pay under the so-called "Compassionate Leave" rule of agreement between the parties effective July 1, 1968, such payment covering December 30 and 31, 1968, and January 2, 1969. Claim is made herein for holiday pay for January 1, 1969 under the National Agreement covering Paid Holiday Provisions. The claim has been declined on the premise that payments under the "Compassionate Leave" rule do not constitute compensation for purposes of qualification for holiday pay.

OPINION OF BOARD: The record shows that Claimant was a regularly assigned stenographer at the time of the occurrence giving rise to the claim. Due to the death of her grandfather, she was absent from work with permission on December 30 and 31, 1968 and January 2, 1969. She performed no service on New Year's Day, January 1, 1969. Claimant was allowed pay for December 30 and 31, 1968 and January 2, 1969, under the "Compassionate Leave Rule" (Rule 53 of the applicable Agreement). The claim is for holiday pay for January 1, 1969, under Article II, Section 3 of the National Agreement covering paid holidays.

The only question for determination is whether the payments made to Claimant under the Compassionate Leave Rule qualified Claimant for holiday pay. The Petitioner contends they did and the Carrier contends that they did not. Section 3 of Article II of the Agreement covering paid holidays provides in part:

“Compensation paid under sick-leave rules or practices will not be considered as compensation for purposes of this rule.”

Sick leave is paid under Rule 55 of the Agreement and Compassionate Leave is covered by Rule 53. The Carrier contends in effect that Compassionate Leave payments are to be considered part and parcel of the sick

leave benefits. The Board must reject the contention of the Carrier in this respect. Had the parties intended that Compassionate Leave payments be considered as compensation under sick leave rules or practices, it would have been a simple matter to have so provided, but they did not do so and as it is well settled that this Board cannot amend or revise the Agreement through the guise of an interpretation, we must apply the Agreement as written. Award 8528, cited by the Carrier, does not reveal that the Agreement there involved contained a Compassionate Leave Rule such as Rule 53 here involved.

The claim will be sustained.

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 Employee 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.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of June 1971.