

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Gene T. Ritter, Referee**

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**PARTIES TO DISPUTE:**

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

**ST. LOUIS SOUTHWESTERN RAILWAY COMPANY**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood (6882) that:

(1) Carrier violated the Clerks' current Agreement when it failed and refused to allow Claimant ten (10) days sick leave pay, January 2 through 15, 1970.

(2) That Line Desk Clerk W. P. Cryer now be compensated for ten (10) days sick leave pay at \$26.71 per day.

**EMPLOYEES' STATEMENT OF FACTS:** Mr. W. P. Cryer, whose seniority dates from December 29, 1941, is the regular assigned occupant of a Line Desk Clerk position, Texarkana Yard Office, 4:00 P.M. to 12:00 Midnight, Thursday through Monday, with Tuesday and Wednesday rest days. He became ill while working his assignment Friday, December 26, 1969, but completed the assignment and layed off December 27, account illness. He went to see Dr. Demitri Boosalis who examined him, had X-Rays and lab-procedures made, put him on medication and instructed him to return for further examination, check-up and treatment, a day or two later.

Prior to his becoming ill on December 26, 1969, Claimant had already been off due to illness in 1969 and had been allowed ten days sick leave pay. Furthermore, he had already exhausted all of his 1969 Vacation and had no more vacation time or sick leave pay time due him in 1969 and his name was, therefore, left off the payroll for December 27, 28 and 29, 1969.

On or about January 1, 1970, the Chief Clerk to General Yardmaster J. R. Scott, who compiles the Texarkana Yard Office payroll, called Claimant, inquiring as to how long he might be absent, because of his illness, and was told by Claimant that he would be off several more days, perhaps a month or longer, and during that telephone conversation Claimant requested that he be allowed ten days sick leave pay, starting January 2, 1970. The Chief Clerk then contacted Dr. Demitri Boosalis, who was treating Claimant, inquiring as to the validity of Claimant's illness and under date of January 13, 1970, Dr. Boosalis wrote General Yardmaster J. R. Scott as follows: (Employee's Exhibit A.)

In letter January 13, 1970 (Exhibit No. 2) Dr. Boosalis of the Cotton Belt Employees Hospital Association in Texarkana advised General Yardmaster J. R. Scott that Mr. Cryer was ill and under his care and was unable to work at that time.

Claimant continued on leave of absence until March 19, 1970, when in a letter of that date (Exhibit No. 3) he requested General Yardmaster Scott to permit him to return to the assignment he previously held. He was permitted to displace Clerk G. W. Alverson on the assignment effective 4:00 P. M., March 23, 1970.

Claim was filed in behalf of Mr. Cryer alleging that Carrier violated the Clerks' current agreement when it failed to allow claimant ten days sick pay January 2 through 15, 1970, and that the claimant should be compensated for ten days' sick pay at \$26.71 per day.

The claim was denied.

Exhibits 1 to 5, inclusive, are attached hereto and made a part hereof.

The applicable schedule agreement is that with the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, effective April 1, 1946, reprinted January 1, 1963, copy of which is on file with the Board.

(Exhibits not reproduced.)

**OPINION OF BOARD:** After having used the maximum number of days sick leave and vacation for 1969 as set out in Rule 57, Sec. 1(c) (10 days), Claimant became ill on December 26, 1969. He (Claimant) finished his regular assignment for the day and laid off December 27, 1969. His illness continued until March 19, 1970, when he returned to his assigned duties. Claimant was shown on Carrier's payroll for ten days sick leave pay his first ten working days in 1970. However, when the payroll sheet was received in the Auditors Office, this ten days sick leave was deleted, which action gave rise to this Claim. Carrier denies this Claim on the contention that if an employee is off from work and is not compensated for either vacation or sick leave time, on the last work day of his assignment in the preceding calendar year, that employee is not entitled to sick leave time pay in the following year until after he returns to work in the following year. Carrier cites Paragraph (a) of Revised Rule 26-2 in support of this contention.

The question involved in this dispute is: Is an employee on leave of absence (as agreed by the parties in Paragraph (a) of Revised Rule 26-2) a regularly assigned employee as contemplated in Rule 57, Sec. 1 (c). This Board, under authority of Award 8762 (Daugherty), finds that Claimant herein was not regularly assigned on the Claim dates. Also, Claimant was not in continuous service immediately prior to Claim dates. An employee on leave of absence is not a regularly assigned employee. Awards 16535 (McGovern) and 5201 (Wenke) are not in point in this dispute for the reason that the agreement involved in those awards required continuous service only and did not require Claimant to be "regularly assigned" also, as in the Agreement involved in the instant dispute.

**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 Employes involved in this dispute are respectively Carrier and Employes 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 not violated.

**AWARD**

Claim denied.

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

**ATTEST: E. A. Killeen**  
Executive Secretary

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