

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19911
Docket Number CL-19995

Frederick R. Blackwell, Referee

(Brotherhood of Railway, Airline and Steamship Clerk,
(Freight Handlers, Express and Station Employees

PARTIES TO DISPUTE: (

(Chicago, Milwaukee, St. Paul and Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7168) that:

1) Carrier violated the Clerks' Rules Agreement at Chicago, Illinois when it failed to grant employee F. Herner pay for time absent account sickness.

2) Carrier shall now be required to compensate employee F, Herner for a day's pay in the amount of \$35.49 for March 9, 10, 11 and 12, 1971.

OPINION OF BOARD: This is a sick pay dispute in which claimant received pay for the last two of six days of claimed sickness. After marking off sick with a fever from Tuesday, March 9 through Wednesday, March 17, 1971, claimant requested six days sick pay. (March 9, 10, 11, 12, 15, and 16, 1971). In his sick pay request he stated that he had made "visits to doctors and hospital; also, went to drug store for medications." Upon Carrier's request therefor, he submitted a doctor's statement, dated March 13, 1971 and reading as follows:

"Mr. Herner was seen in my office today for evaluation of fever of undetermined origin. Studies are under way to determine the source of fever."

After receiving the above statement the Carrier allowed sick pay for the latter part of the claim (i.e., March 15 and 16, the two work days immediately following claimant's March 13 visit to the doctor's office); however, Carrier disallowed sick pay for the former part of the claim (i. e., March 9, 10, 11, and 12, the four days preceeding the office visit). Carrier's stated reason for the action was that the doctor's statement provided evidence of sickness for the latter part of the claim, but not the former part.

The Agreement language pertinent to this dispute, found in Memorandum No. 2, September 1, 1941, reads as follows:

"Regularly assigned clerical **employees** will be granted pay for time absent account sickness as follows:

.....

(D) **Employees** with three years or more seniority as a clerk -- ten working days.

(H) The employing officer must be satisfied that the sickness is bona fide. Satisfactory evidence as to sickness in the form of a certificate from a reputable physician, preferably a **company** physician, will be required in case of doubt."

Petitioner contends that the facts of this situation and the foregoing provisions of Memorandum No. 2 do not support Carrier's action. In defense, the Carrier says that, because of doubts about this particular claim, it invoked the paragraph (H) requirement for a doctor's statement and, further, that its action in respect to such statement was not arbitrary or capricious. Thus, the issue drawn is whether the Carrier's action in respect to the doctor's statement was arbitrary or capricious.

Petitioner's argument on the issue is that, by accepting the statement as validating the latter part of the claim, the Carrier in effect admitted the validity of the former part. In speaking on this point in its Rebuttal Brief, the Petitioner stated:

"...if **employee Herner's** absence on the dates March 15 and 16, 1971 was the result of a **bona fide** sickness why then did the Carrier refuse to consider the dates of March 9 to and including March 12, 1971? Surely he did not have a doctor's certificate saying he treated him on those two dates."

Petitioner seems to urge here that the evidence of sickness was essentially the same for both the former and latter part of the claim period and, consequently, if Carrier had reason to pay the latter part, it should have paid the former part also. We appreciate the logic of this contention, for, indeed, the doctor's statement can be read as providing information about claimant's health on March 13, but as providing no information at all about his health during either the former or latter part of the claim period. The logic is **not** flawless, however, because even though one **may** validly conclude that the evidentiary basis for the approved part of the claim may be no better than the basis for the disallowed part, this conclusion does not

provide any evidence for the disallowed part. Carrier was within its rights in challenging the **genuiness** of the **claimant's** sickness and the Organization had opportunity to provide evidence, including lay evidence, in response to the **challenge**. Claimant's sick Leave request referred, for example, to a hospital visit, but claimant was not disposed to provide information on this visit or otherwise corroborate the former part of his claimed period of sickness. We do not suggest that an employee must see a doctor on the first day of a sickness or even that each sickness requires a doctor's care at some point during the sickness. Nonetheless, on the whole record of the instant case, and especially in light of the **evidenciary** limitations of the doctor's statement, there is no basis for disturbing the Carrier's action on the grounds that it was arbitrary or capricious. Accordingly, we shall dismiss 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 **Employes** 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

The claim is dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD **ADJUSTMENT** BOARD
By Order of Third Division

ATTEST:

A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 7th day of September 1973.

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A. W. Paulos
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