

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20406
Docket Number CL-20365

Frederick R. Blackwell, Referee

(Brotherhood of **Railway**, Airline and Steamship **Clerks**,
(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-7346**)
that:

1) **Carrier** violated the provisions of the Clerks' Rules Agreement
when it refused to pay employee A. **Roshko** for time absent **account of sickness**
occurring on November 9 and 10, 1971.

2) Carrier shall **now** be required to **compensate** employee A. **Roshko**
for two days' pay **in** the **amount** of \$71.00 for November 9 **and** 10, 1971.

OPINION OF BOARD: On November 9, 1971, the **Claimant** phoned **in** sick; she
did not work on November 9 and 10, 1971. On November
11, 1971, she submitted a request for sick leave payment for November 9 **and**
10. On December 6, 1971, her Supervisor sent her a **written** form **requesting**
satisfactory evidence of illness in the form of a certificate from a **repu-**
table physician. **The** Claimant responded to this form in a December 13 letter
in **which** she asked the Supervisor to give his reason for doubting that she
was sick. The Supervisor replied on December 15 that he was under **no** obli-
gation to provide such reason and that he was awaiting her reply to his re-
quest of December 6. **The Claimant** then wrote on December 21, 1971 that **her**
illness did not need doctor's care and **that** she had treated herself. Sub-
sequently, the Carrier refused to make the sick leave payment, whereupon
a claim was filed on the premise that **such action violated Memorandum** of
Agre-t No. 2.

Memorandum No. 2, in pertinent part, reads as follows:

"(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 re-
quired in case of doubt."

The **Employees** argue that: (1) the Carrier should have given the
reason for the doubt about the genuineness of the Claimant's sickness; (2)
the Carrier could have had the Claimant examined by its own physician under
the text of **Memorandum** No. 2; and (3) the Claimant **was** confronted with the
impossibility of furnishing a doctor's certificate, because she had not seen
a doctor, but that not seeing a doctor does not in itself **mean** that the
sickness was feigned.

We do not believe that the applicable text requires the Carrier to give the basis for its doubt about the genuineness of an employee's illness; however, it is noteworthy that, while this claim was still on the property, the Carrier informed the Acting General Chair- that the Claimant's absences due to sickness had **amounted** to ten days each year from 1964 through 1970. (Ten days **is the maximum allowed under Memorandum No. 2.**) We likewise find nothing in the applicable text to indicate that the Carrier is obligated to have a sick leave applicant **examined** by a Carrier physician. Such an examination is the Carrier's right under the text; however, the use of the term "preferably" in the text does not convert such right into an affirmative obligation. With regard to the **Employee's** third point, we recognize the impossibility of furnishing a doctor's certificate where a doctor has not been consulted. We also recognize that the failure to see a doctor does not in itself mean that a sickness is feigned. Nonetheless, the text of paragraph **(H)** of **Memorandum No. 2** puts the employee on notice that, in the **event** the genuineness of a claimed sickness is challenged, the likelihood is that he will be asked to produce a doctor's certificate as proof of his sickness. Consequently, when, as here, a doctor's certificate is not available, the employee has the burden to offer other convincing evidence to establish his right to receive sick leave payments. The Claimant offered to **meet** that burden by showing that she had called in sick on November 9 and by submitting a written statement that she had been sick for two days. Thus, the **Claimant**, herself, was the sole source of her evidence of **sickness**. The **Carrier** rejected such evidence as insufficient and, on the whole record, it cannot be said that the Carrier's determination in this regard was so unreasonable as to be arbitrary or capricious. We shall deny 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 **Employee** 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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A.W. Paulke
Executive Secretary

Dated at Chicago, Illinois, this 27th day of September 1974.