

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21781
Docket Number CL-20970

Lloyd H. Bailer, Referee

PARTIES TO DISPUTE: ((Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station **Employees**
(Pacific Fruit Express Company

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood,
GL-7750, that:

(a) The Pacific Fruit Express Company violated the **Clerk's** Agreement extant when it failed and refused to allow Mr. Clarence C. Greenstreet eight (8) hours' compensation at the pro rata rate of his position December 12, 1972 in accordance with the terms of Rule 35 of the Agreement; and,

(b) The Pacific Fruit Express Company shall now be required to compensate Mr. Greenstreet for eight (8) hours at the rate of position he occupied on December 12, 1972.

OPINION OF BOARD: The sick leave rule of the parties' Schedule Agreement reads in pertinent part:

"RULE 35

SICK LEAVE

* * * *

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."

Claimant Greenstreet gave illness as the reason for his absence on December 12, 1972. **When** he inquired why his paycheck for the pay period ending December 15, 1972 was short, the timekeeper informed him that by order of **Superintendent G. L. Miller** he had not been paid for December 12. By letter dated December 29, 1972 addressed to the **superintendent, claimant** requested sick leave pay for the date in question, stating his absence was due to "a sore throat and cold" acquired as a result of working conditions. The superintendent refused the request, although claimant had not used up all of his paid sick leave allowance

specified in the Agreement. The tenor of Superintendent Miller's **January 3, 1973** reply letter indicated quite clearly his doubt that claimant's absence was due to illness.

The Organization contends that most **employees** who lay off sick do not find it necessary to use the services of a physician, and inquires how claimant could have obtained a certificate of illness from a physician who did not treat him. We recognize the impossibility of furnishing a physician's certificate where no physician was consulted. We also recognize that **failure** to see a physician is not in itself proof that the illness is fictitious. But the above-quoted portion of the sick leave rule puts the **employees** on notice that if the authenticity of a claimed illness is challenged, the probability is that he will be asked to furnish a physician's certificate as proof of illness. Consequently when, as here, a physician's certificate is not available, the **employee** has the burden to supply other convincing evidence that he was ill on the date in question. Claimant has not met this burden. A denial award is warranted.

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;

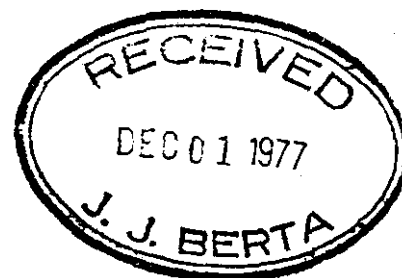
That the Carrier and the **Employees** involved in this dispute are respectively Carrier and **Employees** within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

A W A R D

Claim denied.



NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this **18th** day of **November 1977**.