

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21865
Docket Number CL-21656

James F. Searce, Referee

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

PARTIES TO DISPUTE: (

(Consolidated Rail Corporation
(Former Lehigh Valley Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the **Brotherhood**,
GL-8109, that:

(a) Carrier violated the May 1, 1955 Rules Agreement between the parties when it refused to pay Clerk Herbert F. **McKellin** the Funeral Leave **allowance** prescribed by Rule 60 (d) of said Agreement when he was absent during the period November 14 through 19, 1974, because of the death and funeral of his mother-in-law.

(b) Carrier **now** be required to pay Claimant **McKellin** three days pay at the applicable pro rata rate of the position to which he was **regularly** assigned prior and subsequent to the dates of said absence.

OPINION OF BOARD: **This** case involves interpretation of Rule 60 (d) of the parties' agreement of May 1, 1955, reading:

"Employees absent on account of **death** in family
- maximum of three working days; same to be
included in sick allowance granted for length
of service.

NOTE : Maximum allowance referred to in the
above paragraph applies to immediate family
only."

The claim resulted from the Carrier's decision to limit the term "immediate family" to include only "wife, children, father, mother, brother, or sister," as written into agreements with other crafts of **employees** subsequent to the agreement here involved.

When Claimant was absent November 14 through 19, 1974, due to death of his mother-in-law on November 15, 1974, his claim for payment of the maximum under the above rule **was** denied, with Carrier taking **the position** that "in-laws are not considered members of the immediate family."

Affidavits from **employees** attesting to their understanding that fathers-in-law and mothers-in-law **were** included within the term "immediate family" and that Carrier had so considered and **paid** similar claims since the agreement was adopted **were** presented on the property and such proof **was** not overcome by Carrier. Carrier merely asserted that **the** payments were in error and that agreements with other **employees** wherein restrictive language was written into the rules should apply to clerks also.

In the resolution of this case, Carrier's agreement **with** other **employees** does not alter the **interpretation** or application of the Clerks' agreement. **Here** the **preponderance** of evidence **supports** **the** claim of the **Employees** that mothers-in-law have been considered within the term "**immediate** family."

Claim sustained for the maximum of three working days as provided in Rule 60(d).

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

The Agreement **was** violated.

A W A R D

Claim sustained per opinion.

FEB 1978

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 31st day of January 1978.