

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22550
Docket Number MS-22260

Rolf Valtin, Referee

PARTIES TO DISPUTE: (Kenneth B. Parker
{ Chicago, Milwaukee, St. Paul and Pacific
{ Railroad company

STATEMENT OF CLAIM: "It is **my** desire to be **awarded** one sick **days pay** under the Rules of **Memorandum** No. 2 of **the** Clerks Agreement."

OPINION OF BOARD: At the time here in question, the **claimant was** 8 Review Clerk (Position No. **43420**) in Seniority District No. 71. His service **date** is **May 4, 1959**. His Scheduled work-week **was Monday through Friday, 8:20 AM** was his shift-starting time. He is **claiming sick pay** for **Monday, February 23, 1976** under Memorandum No. 2 of the applicable Agreement.

The **Memorandum** in part reads as follows:

"Effective July 1, **1975**, it is agreed:

(8) Subject to the conditions **hereinafter enumerated**, **regularly assigned employees under** this agreement who have been **in** the continuous service of the **Carrier** for the period of time 8s Specified, **will be granted pay for time** absent on account of 8 **bona fide case of sickness as follows:**

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"supervisor and must also give notice to such supervisor of any subsequent change in the place where he can be found. Where it is impossible to give such notice within the time above **prescribed**, it **shall** be given **as** soon **as** **circumstances permit**. The failure to cause such notice to be given shall deprive the **employee** of his right to be **paid** for such scheduled tour of duty... **The failure to cause** notice to be given **as** herein provided shall not be excused unless the Carrier is convinced that special circumstances made it impossible..."

It is **as** conceded fact that the claimant phoned his supervisor at about **8:20 AM** -- i.e., that the claimant did not give notice of illness "at least one hour before the commencement of his scheduled tour of duty for that day". The claimant relies on his statement that he awoke at **6:15 AM**; that he had **asore** throat and felt weak and **dizzy**, as he had over the weekend; that he woke up his boy to get the boy off to school; that he (the claimant) then returned to his bed; that he therewith either **fell** asleep or fainted; and that it was **8:15 AM** when he re-awakened.

We think we would err were we to **overrule** the Carrier's resistance to the claimed sick pay. For one thing, the concluding portion of paragraph (c) of the Memorandum **specifically** states that "**The failure to cause notice to be given as herein provided shall not be excused unless the Carrier is convinced that special circumstances made it impossible**" -(emphasis supplied). And for **another**, we do not believe that the Carrier can be **taken** to task for its lack of conviction that the **circumstances** were such **as** to **have made** it impossible for the **claimant** to give timely **notice**. By the claimant's own statement, the realistic assessment is that he was sufficiently awake at **6:15 AM** to function and that, rather than either prepare himself to go to work or report off **as** sick, he went back to bed **and overslept**.

The **claimant** argues that he has never before been denied a claim for sick pay. The difficulty with the **argument**, it seems to us, is that it demonstrates good-faith dealing by the Carrier quite as much as by the claimant.

FINDINGS: The Third Division of the Adjustment **Board**, **after** giving the parties to this dispute due notice **of** hearing thereon, and upon the whole record and **all** the evidence, **finds** and holds:

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.

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Claim denied.

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

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 28th day of September 1979.