

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 22992
Docket Number CL-22949

Martin F. **Scheinman**, Referee

(Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express **and** Station **Employees**
PARTIES TO DISPUTE: (
(St. Louis-San Francisco Railway Company

STATEMENT OF CLAIM: **Claim** of the System **Committee** of the Brotherhood (GL-8819)
that:

1. **Carrier** violated the terms of the Sick Leave **Agreement** of December 1, 1969 when on July 10, 1978, it failed **and** refused to allow clerical employee D. W. Johnston pay for 7.9 hours at the rate of position No. 405.

2. Carrier **shall now** compensate clerical employee **D.** W. Johnston for 7.9 hours pay at the rate of position No. 405 for July 10, 1978.

OPINION OF BOARD: Claimant, D. W. Johnston, was regularly assigned to the Rotation **Extra** Board headquartered in Carrier's General Stores Department **in Springfield**, Missouri. Rotating Extra Board positions are regularly assigned, except hours of service and work assignments are omitted on the bulletin, and the rate of pay of such positions is the rate applicable to the position on which service is performed.

Incumbent of Rotating Extra Board positions headquartered at the General Stores report to work at **7:30** A.M. to the Foreman who assigns them to the position they are to work unless they have already been assigned to a continuing vacancy. **On** July **10th**, 1978, Claimant reported for work for his regular assigned position No. 405. Claimant was issued an assignment by the Foreman in the **Storeroom**.

After receiving his **assignment**, Claimant advised the Foreman that he was ill and unable to protect the **assignment**. **He informed** the Foreman that **it** would be necessary for him to leave the property because of illness.

Upon his **return** to work, Claimant submitted the appropriate form for claiming sick pay for July **10th**, 1978. **Claimant's** employing officer told Claimant that payment would not be allowed because Carrier was not satisfied that this was a **bona** fide case of sickness.

The Organization contends that Carrier violated the Section C of the Sick Leave Agreement. It states:

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

X-1
In the **Organization's** view, if Carrier doubted that Claimant was **really** ill, it could have required **him** to submit a certificate from a reputable physician. Since Carrier did not avail itself of this method, the **Employes** insist that Carrier **may** not challenge Claimant's **statement** that he was ill.

X-2
Carrier, **on** the other **hand**, maintains that it did not violate the Sick Leave Agreement. It argues **that** a physician's note **was** not requested because there was no doubt **whatsoever** on the part of the employing officer that Claimant was not sick.

X-3
A review of the transcript as well as the submissions to this Board convince us that the **Organization's** argument is more compelling. The claim must be sustained.

X-4
The crux of **Carrier's** contention here is that the Foreman knew that Claimant was not **ill** on July **10th**, 1978. Therefore, **there** was no reason to have **Claimant** submit a physician's certificate.

X-5
Carrier's contention **must** be rejected. The transcript simply does not establish that the Foreman knew that Claimant was not ill. On the contrary, the evidence indicates that the **Foreman** led Claimant to believe that his statement he was ill and going home was **acceptable**. There is nothing to indicate that **Claimant's** statement that he was ill was questioned by the Foreman. There is no evidence that the Foreman objected to Claimant not covering the **assignment** or leaving the property. **In** fact, when Claimant stated that he was ill and going home, Foreman **admitted** that he responded "O.K."

X-6
Thus, we are persuaded that the Foreman did not challenge the authenticity of **Claimant's statements**. Stated simply, we are convinced that the Foreman did not know that Claimant was not ill. As **such**, we will sustain the claim as presented.

Award **Number** 22992
Docket **Number** CL-22949

Page 3

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 violated.**

A W A R D

Claim sustained.

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

ATTEST:

A. W. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 29th day of September 1980.