

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22993
Docket Number CL-23089

Martin F. Scheinman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
(
(New Orleans Public Belt Railroad

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-8897)
that:

1. Carrier violated, and continues to violate, the parties' Agreement when it refused to compensate Miss Myrne Campbell for two (2) days sick leave in accordance with the rules of the Agreement.

2. Carrier shall be required to compensate employee Myrne Campbell eight (8) hours pay for the dates September 8 and 9, 1978, when she was absent due to illness.

OPINION OF BOARD: Claimant, Myrne Campbell, was involved in an accident on August 25th, 1978. As a result of injuries sustained Claimant did not work from August 25th through September 11th, 1978. Claimant requested sick pay for each of these days.

Claimant received sick pay for all of the days requested except for two days, September 8th and 9th. Carrier refused to grant sick pay for these days because it did not believe Claimant's sickness to be bona fide. Carrier's argument was based on the fact that Claimant was observed by the Assistant General Manager and Secretary-Treasurer testifying in court on September 8th.

The Organization claims that Carrier's failure to allow Claimant sick time for September 8th and 9th violates Section V, Rule 8 of the Agreement. It contends that Claimant provided the documentation required in Rule 8.

A determination of whether Claimant is entitled to sick pay, on the days in question, requires the interpretation of Section V, Rule 8. It states:

"No payments shall be made under this section unless the employee's supervisor is satisfied that the sickness is bona fide and of sufficient severity to require an absence from work. Satisfactory evidence as to sickness in the form of a certificate from a reputable physician will be required in case of doubt."

Under Rule 8 the payment of sick pay is not automatic. On the contrary, the parties have agreed that payment is not to be paid "unless the supervisor is satisfied that a sickness is bona fide."

However, Rule 8 does not leave it to the supervisor to decide which sicknesses are bona fide and which sicknesses are not. Instead, a mechanism is provided for making such determinations. Carrier may require the employee to submit a certificate from a reputable physician when there is doubt whether the sickness is bona fide. This is the only method contemplated in Rule 8.

Here, Claimant submitted medical documentation. The physician indicated that Claimant could return to work on September 11th. There is nothing to indicate that the physician was not "reputable." Under the terms of Section V, Rule 8, the physician's determination on Claimant's physical ability to perform her job may not be second guessed.

We will sustain the claim for 80% of her regular salary, in accordance with the Sick Leave Rule.

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 violated.

A W A R D

Claim sustained in accordance with Opinion.

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.