

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **23195**
Docket Number CL-22827

George E. Larney, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express **and** Station **Employees**
(Burlington Northern Inc.

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood (GL-8755)
that:

1. Carrier violated the effective Agreement of Rules between the parties, Rule 52 thereof in particular, when it refused to pay Mr. M. H. **Olafson** one (1) day's sick leave allowance for February 24, 1978.

2. Carrier shall now be required to correctly allow payment to **Claimant Olafson** of 80% at the pro rata rate of his regular position for February 24, 1978.

OPINION OF BOARD: The facts in the instant case are not **in** dispute. **Claimant, Manfred H. Olafson**, assigned as Agent-Telegrapher at Carrier's Lisbon, North Dakota facility, received a letter from his personal physician dated February **15**, 1978, apprising Claimant of the results of a physical examination he had undergone on February 7, 1978. In this letter, Claimant's physician advised him, that as a result of tests proving **positive** for occult blood in his stool specimens, he thought Claimant should come to see him for further tests. This letter reads in pertinent part as **follows:**

'The three stool specimens were all positive for occult **blood**. I suspect this **may** be related **to** taking the **Prednisone**. However, I think the only way we can be sure is to do x-rays **and** I think we should schedule colon **and** stomach x-rays and do a proctoscopy. I will send you appointments for these things. If you can't keep those appointments, please let me know."

Claimant heeded advice of his physician **and** on dates of February 22, 23, and 24, 1978, he was absent from his assignment account **travelling** to the Fargo Clinic in Fargo, North Dakota, located approximately seventy-five (75) miles away from home and remaining **in** Fargo until the various medical tests were completed. On February 27, 1978, Claimant submitted Form **13052, Employee Leave Claim**, specifying the three (3) days spent at the Fargo Clinic as sick days and requesting sick leave benefits for date of February 24, 1978, in accordance with **Rule 52** of the Controlling Agreement. **In relevant part, Rule 52 reads as follows:**

"RULE 52. SICK AND FUNERAL LEAVE

"A. Subject to the conditions enumerated below, **employees** who have been in the service of the Carrier continually for the **period of time** herein specified will be allowed **sickness** benefits on a daily basis when absent from work due to a **bonafide** case of sickness (not including pregnancy) of such employs:

* * * *

"(4) Upon completion of twenty years or more of continuous service under this Agreement, a total each year of service thereafter of twenty working days.

* * * *

"NOTE B: The daily **sickness** benefit comprehended by this rule is 80 per cent of the basic daily pro rata rate of the regular position of which the employe is an incumbent. *** In no case shall the benefits prescribed herein be payable for more than five days in any work week.

* * * *

"E. The benefit provisions of this agreement apply to non-occupational injury or bona fide sickness of organic origin and of sufficient severity to disable the employe, provided that such non-occupational injury or sickness was not caused by the use of drugs or intoxicants, recklessness, gross negligence or any act contrary to law. The employing officer must be satisfied that the sickness is bonafide. Satisfactory evidence, preferably in the form of a certificate from a reputable physician, **may** be required by the employing officer, in case of doubt.

* * * *

"H. No allowance will be **made** under this rule for the first two working days that an employe is absent account sickness, unless, such absence continues for five **continuous** working days or longer, nor shall any allowance be made **under** this rule for any day on which the employe is entitled to compensation under any other rule or agreement. ***"

The Carrier apprised Claimant in a time roll correction notice dated **March 6, 1978**, that his sick leave claim would not be processed because physicals and x-rays were not compensable under the Sick Leave Rule, Rule 52.

The Organization takes the **position** that Claimant's physical condition of **internal** bleeding as detected by the occult blood in his stool specimens was indeed of **serious** moment, and constituted a condition of **"sickness"** as that contemplated by the contractual language, **"bonafide** case of sickness" and "bona-fide sickness of organic origin", used in Rule 52 referenced above, Sections A and E respectively. In support of its position, the Organization argues the x-ray tests which were taken on the claim dates in question were not of a routine **nature**, but rather, they were required to determine whether Claimant had a sickness which would have necessitated immediate attention. In furtherance of this point, the Organization cites a letter dated June 23, 1978 from Claimant's personal physician to the Carrier which **reads**:

"Mr. **Olafson** was found to have blood in his stools in February. This is, of course, a very serious matter and that **is** the reason that he had to have the examinations of the intestinal track both by proctoscopy and x-ray. These studies were done February 22, 23, and 24."

In sum, the Organization submits the following:

1. Claimant did, in **fact**, have a "bona fide **sickness** of organic **origin**";
2. This was a serious **sickness** of the **moment** which required **immediate** attention;
3. **Claimant** did provide the requisite "satisfactory evidence" to Carrier in the "form of a certificate from a **reputable** physician"; and
4. Carrier's failure to compensate Claimant **80%** of the pro rata rate of his regular position for February 24, 1978 is a violation of the effective **Agreement** of Rules between the parties, Rule 52 thereof, in particular.

The Carrier takes the position Claimant was not **sick** within the meaning of that term as used in the language of Rule 52. Carrier argues that nowhere in the handling of this claim has the Organization presented competent evidence supporting its allegation **Claimant** was sick or prevented **from** working because of sickness. On the contrary asserts the **Carrier**, **Claimant was prevented from** working on the claim date in question not because of his physical condition but rather because of the geographical distance of seventy-five (75) miles between

the Fargo Clinic and his place of work in Lisbon, North Dakota. Carrier further argues that nothing in the language of Rule 52 mandates payment of sick leave benefits to an **employee** who absents himself from work for the purpose of taking physical examinations and medical tests. In support of this latter point, Carrier notes Section E of Rule 52, reproduced above, applies to non-occupational injury or **bona fide** sickness of organic origin and of sufficient severity to disable the employee. Thus asserts the Carrier, two (2) conditions **must** be met in order to receive sick leave benefits: (1) the sickness **must** be bona fide; and (2) the sickness **must** be of sufficient severity to require an absence from work. The Carrier argues that in the case at bar neither of these two conditions were in evidence.

In ascertaining the facts before us, associated with the situation in its entirety, it is the Board's determination that this is an instance where upholding the clear **and** unambiguous **meaning** of the pertinent contract language of **Rule 52** is, in fact, in direct conflict with what can be viewed as an equitable adjustment of the instant **dispute**. This conclusion is made all the more harsh when consideration is given to **Claimant's** long service with the Carrier and the fact that Claimant did not, in any manner, attempt to cause an abuse in sick leave policy by submitting the instant claim. Nevertheless, Claimant's physical condition which motivated him to seek further **medical** tests indeed fails to meet the contractual definition of "sickness" as set forth in the language of Rule 52. Furthermore, we agree with Carrier's position, that the geographical distance between Claimant's work site which was also his place of abode, and the Fargo Clinic was the determinative factor in preventing **him** from working on the claim dates in question and not his physical condition at the **time**. **Had** the Clinic been located in Lisbon rather than Fargo, this Board believes it would have been possible for Claimant to both work **and** see his physician as his physical condition was not of a debilitating nature preventing him from reporting to work or working. Finally, as it **turns out**, Claimant's internal bleeding was later **attributed** to the medication he was then taking and not to any **immediate** sickness or disease. For all the foregoing reasons, the Board finds we must deny the claim.

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.

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: _____

A.W. Paulsen

Executive Secretary

Dated at Chicago, Illinois, this **27th** day of **February 1981.**