NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 23531
THIRD DIVISION Docket Number CL-22579

Dana E. Eischen, Referee

PARTIES TODISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes
(The Chesapeake and Ohio Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-8577) that :

(a) The Carrier violated the terms of Rule 60 September 11, 12, and 13, 1974 when they refused to pay Mr. Wm. D. Keim, Jr. because he was absent, due to infection in the root of a tooth

Mr. Wm. D. Keim, Jr. worked on September 10, 1974 with a swollen Jaw and a toothache, then he went to a dentist at 6 p.m. on September 10, 1974 for advice and/or treatment in connection with his toothache, which was diagnosed a8 an absessed tooth that would require the attention of an Oral surgeon and,

(b) Mr. Wm. D. Keim, Jr. incumbent of A-565 Payroll Accounting Clerk, rate $50.06 per day should now be allowed three days at the pro rata rate of $50.06 per day because of this violation on September 11, 12, 13, 1974.

OPINION OF BOARD: At the time the instant Claim arose, Claimant was employed in Carrier's Finance Department, Baltimore, Maryland on the Auditor of Expenditures Roster, Baltimore General Office District. He was regularly assigned to the position of Payroll Accounting Clerk, A-565 with a rate of $50.06 per day.

On Tuesday, September 10, 1974 Claimant visited his dentist after his tour of duty regarding a toothache and swollen jaw. His dentist referred him to an Oral Surgeon, Theodore S. Freedman, D.D.S. for treatment. On Wednesday, September 11, 1974 Claimant's tooth was extracted and he did not report for work on Thursday, September 12, or Friday, September 13, 1974. Claimant requested sick pay under the provisions of Rule 60 of the Agreement between the parties for each of these three days. He was advised by Carrier that such absences were not compensable under the application of Rule 60, unless an individual is confined to a hospital for actual dental surgery.

Local Chairman E. R. Dotson filed a claim on behalf of Claimant by letter dated October 9, 1974 for one (1) day's pay for each of the dates September 11, 12 and 13, 1974. The claim was denied by the Director of Payroll

accounting in a letter dated December 10, 1974. Under date of January 9, 1975, the General Chairman appealed the claim to Carrier's Director of Labor Relations. The appeal was denied in a letter dated May 6, 1976.

Rule 60 reads as follows:

"RULE 60-ABSENT ACCOUNT PERSONAL ILLNESS WITH PAY

1. There is hereby established a non-governmental plan for sickness allowances or sickness allowances supplemental to.the sickness benefit provisions of the Railroad Unemployment Insurance Act as now in effect or as hereafter amended. The purpose of this plan is to provide sickness allowances to employes absent account of illness and to supplement the benefits provided under the Railroad Unemployment Insurance Act where benefits are payable thereunder.

2. The plan provided for herein contemplates that on any given day for which an employe is entitled to benefits under both the Railroad Unemployment Insurance Act and this Rule that the Carrier shall supplement the benefits provided under the Act and received by the employe to the extent of the difference in benefits provided under the Act and that provided in this Rule (but only for days on which the employe would have had a right to work with a maximum of five days supplemental benefits in any calendar week).

3. Beginning on the first day an employe is absent from work due to personal illness (not including pregnancy) and extending in each instance for the length of time determined by the provisions of the Subsections of this Section 3, each such employe shall be entitled to a sickness allowance for such days of illness on which he otherwise would have worked (subject to the provisions of Section 2 hereof) in accordance with the schedule of benefits set forth in the following Subsections:

(a) Employes with less than 2 years' service-1/2 pay after 5 working days lost but not exceeding 5 days in any calendar year.

(b) Employee with 3 to 5 years' service-entitled to 5 days pay after first 5 working days loot in any calendar year.

(c) Employes with 5 to 10 years' service-entitled to 10 days without any waiting time in any calendar year.

"(d) Employes with 10 or more years' service-entitled to 20 days without any waiting time in any calendar year.

(e) Employes may accumulate unused sick leave for previous years up to a maximum of 60 full time days.

4. The supervising officer of the Carrier will supply employea entitled to file for sickness benefits under the Railroad Unemployment Insurance Act the necessary papers for filing claim and supplying the Carrier such information as it may need in connection therewith in order to facilitate the collection of money due the employe from the Retirement Board and the making of payment by the Carrier of any supplemental benefits due the employe under the provisions of this Rule.

In the event an employe forfeits sickness benefits under the Railroad Unemployment Insurance Act for any day of sickness because of his failure to file for such benefits, he shall only be entitled to any Carrier paid supplemental benefit due for that day except where the failure to file was unavoidable.

5. It will be optional with the Carrier to fill or not fill the position of an employe who is absent account of personal illness, including the first five days of an employe with less than five years' service who is absent account of personal illness, under the provisions of this rule. If the Carrier elects to fill the vacancy, the rules of the Agreement applicable thereto will apply. The right of the Carrier to use other employes on duty to assist in performing duties of the position of the employe absent under this rule is recognized provided, however, the absentee's work performed by "other employes" is performed within the assigned hours of the "other employes".

6. The employing officer must be satisfied that the illness is bona fide. Satisfactory evidence in the form of a certificate from a reputable doctor will be required in case of doubt. The Local Chairman and the General Chairman will cooperate with the Railway to the fullest extent to see that no undue advantage is taken of this rule.

7. Before applying the foregoing provisions, the Carrier shall determine, under the principles stated in this paragraph, whether sick leave compensation or supplemental allowances are to be paid. Any employe who is not entitled to Railroad Unemployment Insurance Act sickness benefits by virtue of insufficient earnings in a base year, or where period of illness is not of sufficient length to satisfy a waiting period, will be paid compensation, and all such amounts paid will be reported as compensated sick leave. In all other instances supplemental allowances will be paid and they will not be reported as compensation.

"8. For the time necessary to attend funeral and handle matters related thereto, in the event of death of a spouse, child, parent, parent-in-law, brother or sister of an employe who has been in service one year or more unused 'sick leave' days which have accrued to him under this rule (not exceeding three consecutive work days unless, in individual hardship cases, local agreement is otherwise reached) may be used, which will be deducted from the time which he would otherwise have available for time lost account personal illness.

NOTE 1: Absence from duty account of off-duty injury will be considered the same as absence account of personal illness for purposes of this Rule, provided such injury is not a result of misconduct on the pert of the employe. If an employe is compensated under this Rule and receives damages because of injury, the Carrier will be reimbursed for allowances made hereunder; however, such reimbursement will be limited to the amount received in damages or the allowances received under this Rule, whichever is less.

NOTE 2: Cut-off and extra employee who make themselves available to protect work under Rule 12 of this Agreement will be eligible for sickness allowances under this rule on days of illness on which they would otherwise have worked, provided they work sufficient days in the preceding year to qualify for a vacation in the current year under the National Vacation Agreement of December 17, 1941, as amended.

NOTE 3: All employes who are receiving allowances or benefits under protective agreements such as the Stabilization Agreement of February 7, 1965, the so-called AMTRAK Agreement effective May 1, 1971, the Washington Agreement and agreements covering intra-carrier consolidations, transfers and reorganizations, will be eligible for sickness allowances as prescribed in this rule.

"NOTE4: A regularly assigned employe who has a protected rata under a protective agreement and who is entitled to allowances under this rule, will be paid at the rate of his regular assignment (position to which assigned by bulletin) or his protected rate, whichever is higher.

A cut-off or extra employe who has a protected rate under a protective agreement and who is entitled to allowances under this rule, will be paid at the rate of the position he would have worked or his protected rate, whichever is higher."

We need not linger overlong on this case because the claim clearly is sustainable under Rule 60. There can be no doubt that Claimant's absence from work was due to a bona fide and serious personal illness. The unrefuted record including a written statement from his oral surgeon demonstrates that Claimant's ailment was not trivial and no one who has had dental surgery for removal of an impacted tooth or suffered from an abscessed tooth would so argue. Carrier's theory that Rule 60 applies to dental surgery involving hospital confinement but not to dental surgery involving home convalescence finds no support in the language of the Rule and cannot be engrafted thereon under the guise of interpretation by this Board.

Based on the foregoing, therefore, the Claim is sustained.

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 Employes involved in this dispute are respectively Carrier and Employes 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. Pulver
Executive Secretary

Dated at Chicago, Illinois, this 26th day Of February 1982.