

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24051
Docket Number SG-24076

Martin F. Scheinman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalman
(Port Authority Trans-Hudson Corporation)

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Port Authority Trans-Hudson Corporation:

On behalf of Signal Trainee Thomas Hopf for payment for time lost due to sickness on November 27, 28 and 29, 1979, in accordance with Article IX - Paragraph A of the current Signalmen's Agreement."

OPINION OF BOARD: The facts in this case are not in dispute. Claimant, T. Hopf, was hired to work in Carrier's Track & Structure Department on June 7, 1976. On November 5, 1978, he was hired as a Signal Trainee under the BRS Agreement. Claimant was ill on November 27, 28 and 29, 1979. He was denied sick pay for those days.

The applicable provision concerning this dispute is Article A7 of the current Agreement.

"Notwithstanding anything to the contrary in paragraph A hereof, employees hired after June 1, 1978 shall be paid supplementary sickness benefits for each work day when sick only after the first five (5) work days of such sickness in the case of all sicknesses arising during his employment hereunder. However, an employee will be paid such benefits on days when hospitalization occurs within the first five (5) work days of a sickness." (Emphasis supplied).

The Organization contends that since Claimant was hired by the Carrier prior to June 1, 1978, he is entitled to sick pay for his illness during the month of November 1979. It argues that the term "hired" is clear and unambiguous. It can only mean "hired" by the Carrier and not "hired" under the Agreement. Therefore, according to the Organization, Article A7 does not apply to Claimant and he is entitled to sick pay as per Article A 1 of the Agreement.

Carrier, on the other hand, maintains that the term "hired" always means "hired under the Agreement" unless specific language indicates otherwise. It also points out that six other signal trainees were hired under the Agreement after June 1, 1978. Like Claimant, they all had worked for Carrier under other agreements before that date. All of these trainees became sick at various times, yet none of them were paid or even filed for sick pay for the first five days of his or her illness. Accordingly, Carrier asks that the claim be rejected.

It is clear that the record evidence fails to substantiate the claim here. Stated **simply**, the **Organization** has not **met** its burden of proving a violation of the Agreement.

The Organization's **interpretation** of Article A 7 **must fail** in light of the consistent interpretation that has been given to this language by the parties. In fact, Claimant himself was out ill on three separate occasions prior to November **1979**. In none of those instances did Claimant receive nor claim benefits for his sickness. Thus, it appears that the parties to this dispute, including the Claimant, have recognized that "hired" in Article A 7 **means "hired under the Agreement"** and not "hired by the Carrier". This is consistent with the historic interpretation given to such provisions in the Railroad Industry.

Finally, other awards cited by the Organization **are** not dispositive of the facts in this dispute. They refer to other agreements involving different language from that which is present here. In addition, past practice under the current Agreement involving the same language is clearly **more** relevant than interpretations of different language under different agreements. Accordingly, the **claim** must be rejected.

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.

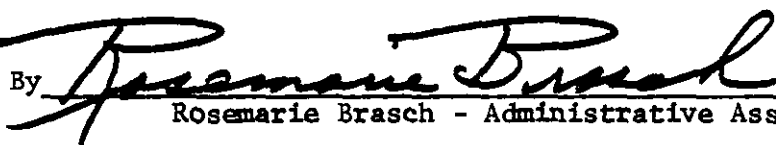
A W A R D

Claim denied.

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

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this **29th day** of November **1982**.