NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 25096
THIRD DIVISION Docket Number CL-24477

Martin F. Scheinman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, (Freight Handlers, Express and Station Employes
(Southern Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9551) that:

Carrier violated the Agreement at Atlanta, Georgia, when it arbitrarily deducted from Mr. M. P. McCoy's pay for the first period of October 1980, a total of $50.00, representing benefits payable at $25.00 per day as entitlement under the Railroad Unemployment Insurance Act for a period of personal illness that encompassed Claimant's assigned rest days of October 11 and 12, 1980.

Carrier shall now be required to reimburse Claimant M. P. McCoy in the amount of $50.00, representing the full improper deduction from the Claimant's payroll check for the first period of October 1980.

OPINION OF BOARD: The relevant facts of this case are not in dispute. On Tuesday, October 7, 1980, Claimant M. P. McCoy marked off his regular assignment account of personal illness. He remained ill until Tuesday, October 14, 1980, when he returned to work. Saturday and Sunday, October 11 and 12, 1980 were Claimant's rest days.

Claimant McCoy applied for Sick Leave entitlements pursuant to Plan A of the Supplemental Sick Leave Agreement, effective January 1, 1975. In addition, Claimant also requested benefits due him under the Railroad Unemployment Insurance Act (RUIA). Under the Act, Claimant was eligible to receive $25.00 per day of illness, after a four day waiting period. Accordingly, RVIA reimbursed Claimant $75.00, or $50.00 for October 11 and 12, 1980, which were his rest days and $25.00 for October 13, which was a work day. However. in computing Claimant's sick leave entitlement pursuant to Plan A, Carrier deducted $75.00 or the total amount Claimant received from RUIA.

The Organization maintains that the $50.00 shortage for Claimant's rest days violates Plan A of the Agreement. That plan reads, in relevant part:

> "2. For any period for which an employee is entitled to supplemental sickness benefits under the foregoing paragraphs and benefits are not payable under the RUIA for such period, supplemental sickness benefits will be payable to such employee in amounts established in paragraph (1) of this Plan A.

"3. For any period for which an employee is entitled to supplemental sickness benefits under the foregoing paragraphs and sickness benefits are also payable under the RUIA for such period, supplemental sickness benefits will be payable to such employee in such amounts so that such supplemental benefits. when added to the benefits payable under the RVIA, shall total the daily amount established in paragraph (1) of this Plan A."

The Organization points out that employees are entitled to sick leave payments for work days on which they are ill. Similarly, the Organization argues, Carrier can only recover amounts paid under RUIA for such work days. Here, Claimant was reimbursed $50.00 for October 11 and 12, 1980 - his rest days. Thus, the Organization reasons that Carrier may not recapture this sum.

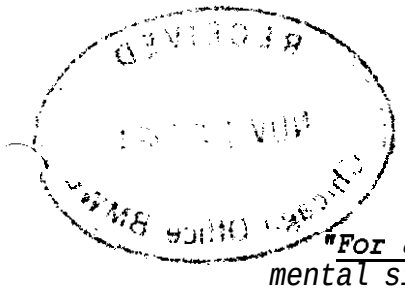
In addition, the Organization insists that the Supplemental Sick Leave Agreement repeatedly uses the terms "daily basis", "daily benefits" and "daily amounts" in describing employees' sick leave entitlements. Thus, the Organization suggests that there exists no basis for Carrier's attempt to recapture RUIA payments to Claimant for the period that he was ill.

Carrier, on the other hand, asserts that it acted properly here. It notes that Paragraph 3 of Plan A refers to "any period for which an employee is entitled to supplemental sickness benefits...." In Carrier's view, such language clearly permits it to deduct RUIA payments for Claimant's rest days as well as his work day. Since, that is what Carrier did in this case, it asks that the claim be rejected.

Upon, a careful review of the applicable Agreement language and other relevant information, we are convinced that the claim must fail. This is so for a number of reasons.

First, the language of Section 3 is clear and unambiguous. It specifically refers to "periods for which an employee is entitled to supplemental sickness benefits..." (emphasis supplied). Moreover, the Section 3 also provides that supplemental sickness benefits for the period of an employee's illness will be added to the benefits payable under the RUIA so as to "total the daily amount established in Paragraph (1)..." Here, the RVIA benefits for the period of Claimant's illness was $75.00; $50.00 for the rest days of October 11 and 12 and $25.00 for the work day of October 13, 1980. Accordingly, Carrier properly deducted the full RVIA payment from his supplemental sickness benefits pursuant to Paragraph (1) of Plan A.

Additional support for our conclusion is found in the negotiations history which led to the language cited above. In April 1971, the Organization sought language to be included in a new sick leave rule then being negotiated. That language read:



"For any day for which an employe is entitled to supplemental sickness benefits under the foregoing paragraphs of this rule and such days are also days for which sickness benefits are payable under the Railroad Unemployment Insurance Act, supplemental sickness benefits will be payable to such employe in such amounts so that such supplemental benefits in connection with the benefits from the Unemployment Insurance Act shall total the daily benefit amount established in paragraph (b) above." (Emphasis supplied).

However, the Organization was not successful in gaining acceptance of this proposal. Instead, the negotiated language referred to 'any period for which an employee is entitled to supplemental sickness benefits" (emphasis supplied). Thus, it is clear that the parties agreed to permit Carrier to offset RVIA benefits for the applicable "period" of an employee's illness rather than for "any day' that employee was not working account of illness. Since RUIA payments were made to Claimant for the period October 11 to October 13, 1980, Carrier was entitled to deduct the full amount of those payments from Claimant's supplemental sickness benefits.

Finally, we have reviewed Awards cited by the Organization in support of its position. For the most part, they do not involve the same relevant language as that found in the instant Agreement. The relevant language of those Awards refers to "any day for which an employe is entitled to supplemental sickness benefits" and to benefits payable under RVIA for "such days." (Emphasis supplied). Thus, those Awards properly required Carrier to deduct RUIA benefits only for the days upon which employees were entitled to supplemental sickness benefits; i.e., their work days and not their rest days. As noted above, however, the instant language refers to the period for which sickness benefits are payable under the RVIA. Thus, our decision here is entirely consistent with the rationale expressed in all but one of the Awards cited by the Organization.

Finally, we are constrained not to follow the rationale expressed in Award No. 23206, cited by the Organization. Furthermore, we are not convinced that the Board, in that case had the benefit of reviewing the language of the applicable agreements in prior Awards.

Accordingly, and for the foregoing reasons, the claim is rejected.

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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of October 1984.

LABOR MEMBER'S DISSENT TO
AWARD 25096, DOCKET CL-24477
(REFEREE SCHEINMAN)

The majority opinion in this instance is contrary to the Agreement and the various Awards cited by the Employes in their Submission, especially Award No. 23206 which dealt with the identical subject.

Award 25096 should be recognized as being palpably wrong!

William R. Miller

William R. Miller, Labor Member

Date 10-30-84