NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 25645

THIRD DIVISION Docket Number CL-25721

James Robert Cox, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes
(Chicago, Milwaukee, St. Paul and Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9860) that:

1) Carrier violated the Clerks' Rules Agreement in the Twin Cities Terminal when it failed and/or refused to compensate the following named employes sick leave payment on the dates shown.

2) Carrier shall now be required to compensate Employe P. F. Bowman for eight (8) hours at the pro rata rate of Yard Clerk Position No. 14550 for March 3 and 4, 1983.

3) Carrier shall now be required to compensate Employe A. R. France for eight (8) hours pay on April 4, 1982, at the applicable rate of his assignment.

4) Carrier shall now be required to compensate Employe Earl A. Olson for eight (8) hours pay on April 21, 1982, at the applicable rate of his position.

5) Carrier shall now be required to compensate Employe Earl A. Olson for eight (8) hours pay on May 23, 1982, at the applicable rate of his position.

6) Carrier shall now be required to compensate Employe John M. Peterson for eight (8) hours pay on May 1 and 12, 1982, at the applicable rate of his position.

7) Carrier shall now be required to compensate Employe P. F. Bowman for eight (8) hours at the pro rata rate of Yard Clerk Position No. 14550 for September 1 and 8, 1982.

OPINION OF BOARD: The parties' Sick Leave Plan provides, "...pay for time absent on acount of a bona fide case of sickness...". Employes, except when impossible to do so, must give at least one hour notice of an anticipated absence and indicate a location where they can be found during their illness. The Program also mandates that "no payment shall be made under this Agreement unless the Carrier is satisfied that the sickness is bona fide. Satisfactory evidence in the form of a certificate from a reputable physician may be required by the Carrier in case of doubt." Any employe who falsely claims payment for sickness is subject to discipline.

Claimant Bowman, ill with the flu, was requested to provide satisfactory proof of illness for sick days taken March 3 and 4, 1982. When he failed to respond, payment was denied. Bowman states that the nature of his illness did not warrant consulting a doctor.

The Organization argues that the Company improperly insisted upon a sick slip since they had no basis to question the validity of the illness. The Organization also contends that the Carrier's request for substantiation in this case was made pursuant to a policy that required all employes in the Twin Cities area to furnish doctor certificates for absences of three or more days. The evidence, however. does not support a finding that such a policy existed.

The Carrier cited Third Division Award 20406 in support of their position that they had a right, as a condition of payment, to require Claimant to provide the medical certification that he had to be off work because of his illness. That finding states that, "it is noteworthy that while this Claim was still on the property, the Carrier informed the Acting General Chairman that Claimant's absences due to sickness had amounted to ten days each year from 1964 through 1970. Ten days is the maximum allowed under Memorandum Number 2...." There was a basis to doubt the validity of the illness questioned.

The evidence indicates that the Carrier informed the Organization on the property, December 3, 1982, that Claimant Bowman's Supervisor telephoned his home March 3rd, the first day of the claimed sick leave, had been advised that Bowman was not home and that his whereabouts were unknown. While the evidence showed other employes had been ill for three or more days without having been required to furnish a sick slip, noting the response to Carrier's call the first day of Bowman's March absence, the Board determines that the Carrier did have a basis to doubt the genuineness of Claimant Bowman's illnesses both in March and September and, consequently, properly required sick slips as a condition of sick day payment. They had reason to question the September illness claim since, as in Award 20406, there was a basis to doubt the bona fideness of the September claim considering the suspect nature of Claimant's prior absence in March.

The claims of the other Claimants are granted. There was no evidence that Carrier had any reason to doubt the validity of their illnesses.

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 to the extent indicated in the Opinion.

A W A R D

Claims sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of September 1985.