

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25948
Docket Number CL-25808

Hyman Cohen, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees

PARTIES TO DISPUTE: (

(Chicago Union Station Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
(GL-9880) that:

1. Carrier violated the effective Clerks' Agreement when, following her vacation, Carrier withheld Relief Janitor Mary Bochantin from service for two days without pay;

2. Carrier shall now compensate Ms. Bochantin eight (8) hours' pay at the pro rate rate of her position for each of dates June 11 and 12, 1983."

OPINION OF BOARD In 1983, the Claimant was employed by the Carrier as a Relief Janitor with Thursday and Friday as her rest days off. She began her employment with the Carrier on August 25, 1980.

The Claimant had scheduled vacation for five (5) days beginning June 4, 1983, and she was to return to work on June 11, 1983. On Wednesday, June 1, the last regular scheduled day of work prior to her vacation, the Claimant did not report for her scheduled work assignment due to personal illness. Her rest days followed and the Claimant was then on vacation after which she returned to work on June 11, her first regular work day. However, the Carrier refused to permit the Claimant to work until she obtained a release from the Carrier's physician. The Carrier's physician was not available on June 11 or 12, 1983. On June 13, 1983, the Claimant saw the Carrier's physician, obtained a release, and returned to work. The Claimant lost two (2) day's work and pay and as a result, she filed the instant Claim.

The Carrier contends that reporting to the Carrier's physician for a return to duty slip after being ill more than five (5) consecutive days or, as in this case, calling in sick prior to going on vacation is company policy, common knowledge and past practice." The record indicates that the Organization has not denied or disputed the Carrier's assertion of a past practice that an employee must furnish a return to duty slip prior to returning to duty if he has not worked for five days, including rest days off or if he was sick or absent in connection with his vacation. Thus, the record establishes the existence of the practice. See Third Division Award No. 2051.

The Claimant's last day of work prior to her vacation period was May 31, 1983, and she next reported to work on June 11, 1983. As a result, the Claimant did no work for a period of ten (10) days. On June 11 the Carrier refused to permit the Claimant to work until she obtained a release from the Carrier's physician. The Carrier's physician was not available until June 13, 1983, at which time the Claimant saw him, obtained a release and returned to work. In Award No. 9, Public Law Board No. 3114, the following was stated:

"The Board finds that, while the Carrier may require the Claimant to produce a medical certificate, it must do so in such a reasonable manner that it will not cause the Claimant to lose a day's pay needlessly."

There is nothing in the record to indicate that the Carrier had ever informed the Claimant, or that the Claimant was aware, that had she presented a release from her personnel physician, the Carrier would have permitted her to work. Peter Santoyo, General Baggage & Mail Agent, General Supervisor, Building Service, sent a letter dated September 6, 1981, to M. K. Morley, Local Chairman, in which he referred to "[R]eporting to the Company Medical Examiner for a return to duty slip. * * *" Moreover, W. M. Freund, Vice President and General Manager, in a letter dated November 23, 1983, to R. L. Knoles, General Chairman, repeated what Santoyo had written in his letter dated September 6, 1983, concerning "[R]eporting to the Company Medical Examiner for a return to duty slip." Thus the record fails to disclose that a return to duty slip from the Claimant's personal physician would have satisfied the Carrier's practice. Since the Carrier's physician was not available on June 11 or 12, 1983, the Board finds that the Carrier caused the Claimant to lose two day's pay "needlessly" as stated in Award No. 9, Public Law Board 3114. Accordingly, it is the Board's judgment that the Carrier acted in an arbitrary and capricious manner in withholding the Claimant from service on June 11 and 12, 1983.

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

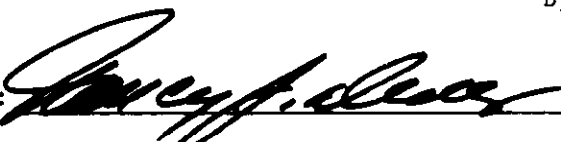
That the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 14th day of March 1986.