

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26222  
Docket Number CL-24476

Martin F. Scheinman, Referee

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

PARTIES TO DISPUTE: (

(The Chesapeake and Ohio Railway Company

STATEMENT OF CLAIM: "Claim of the **System Committee** of the Brotherhood  
(GL-9548) that:

(a) Carrier violated the Clerks' **Agreement** when they failed to properly **compensate** Clerk S. A. Parrino for **work** performed on March 11, 1978.

(b) Carrier now be required to **compensate** Clerk Parrino the difference between 8 hours pay at the pro rata rate of \$59.49 per day and 8 hours pay at the punitive rate of \$59.49 per day."

OPINION OF BOARD: Claimant, at the time of this dispute, was a furloughed **employee** at Newport News, Virginia. **During** the **period** of March 6, 1978 - March 11, 1978, Claimant was lined up to fill the position of Lift Truck **Operator**.

Claimant marked off March 6, 7, 9, and 10 alleging illness.

Previously, Claimant had been **informed** that he was required to provide **proof** of his illness. On March 10, 1978, Claimant provided **documentation** for March 6 and 7. Therefore, he was compensated for those days as a result of the Sick Rule. Since no **proof** of illness was provided for March 9 and 10, Claimant was charged as off without pay.

On March 11, 1978, Claimant was called to protect a vacancy. Since, at that time, Claimant had been **compensated** for only 24 hours during that work week, Claimant was **compensated** at the pro rata rate for March 11, 1978.

Subsequently, on March 15, 1978, Claimant provided proof of illness for his absence of March 9 and 10. In turn, he was allowed pay for those days.

The Organization contends that March 11, 1978, constituted Claimant's 6th day of **work** in the **work** week. Therefore, it asserted that he should have been compensated at the punitive rate for that day.

Carrier, on the other hand, argued that it properly compensated him at the pro rata rate. According to Carrier, as of March 11th, Claimant had failed to provide the medical **proof** as required. **As** such, he was absent without pay for March 9 and 10. Had he provided such proof, **Claimant** would not have been called on March 11th as he **would** have been **compensated** for March 9 and 10 (see **Rule** 12). In the Carrier's view, the problems that may have occurred were caused by Claimant's failure to provide adequate **documentation** as required until March 15th.

This Board has previously addressed this identical issue between these ~~same~~ parties. In both Awards 25379 and 25438 ~~we~~ held that payment at the pro rata rate was appropriate as the ~~employee~~, as of the disputed date, had less than forty compensated hours since the previous dates were not, as of the date of the ~~assignment~~, compensated days. The fact that those dates were subsequently converted to compensated dates was of no ~~moment~~. Nothing presented herein persuades us that those ~~Awards~~ are palpably erroneous. Thus, consistent with the time honored doctrine of stare decisis, this Claim must also ~~be~~ denied.

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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 15th day of January 1987.