

The Third Division consisted of the regular members and in addition Referee Edward L. Suntrup when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(Missouri Pacific Railroad Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood (GL-10112) that:

1. Carrier violated the Clerks' Agreement when it denied payment for two (2) hours sick pay on January 30, 1985, and two (2) hours, forty-five (45) minutes sick pay on the date of May 30, 1985, when Claimant H. J. Williams was absent due to sickness.

2. Carrier's action violated the Agreement between the parties, expressly Rule 40 contained therein.

3. Carrier shall now be required to compensate Claimant Williams for the time absent account sickness as required by Agreement Rule 40."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

On June 14, 1985, claims were filed for the Claimant for the dates of January 30, 1985, and May 30, 1985, on grounds that the Carrier had been in violation of Rule 40 of the Agreement when it had not paid the Claimant for two hours sick leave on each of those two days.

As a threshold issue, the Board must rule on the procedural objection raised by the Carrier with respect to the relief requested in this claim. The Carrier argues that the Organization was in violation of the time-limits of Rule 43 of the Agreement when it claimed pay for January 30, 1985, and that this part of the claim should be dismissed. Rule 43 states the following, in pertinent part:

"Rule 43

- (a) All claims or grievances must be presented in writing by or on behalf of the employee involved, to the officer of the Carrier authorized to receive same within 60 days from the date of the occurrence on which the claim or grievance is based."

The relief requested for January 30, 1985, shall be disallowed, therefore, on procedural grounds. The relief requested for May 30, 1985, must be determined on the merits.

At bar here is the proper interpretation of Rule 40 of the Agreement which reads as follows:

"SICK LEAVE

Rule 40

Sick Leave allowance, as provided herein, is supplemental to the sickness benefit provisions of the Railroad Unemployment Insurance Act as now in effect or hereafter amended. The purpose of this sick leave rule is to supplement the sickness benefits payable under the Act and not to replace or duplicate them.

- (a) Subject to the conditions set forth herein, employees who have been in the continuous service of the company for the period of time specified will not have deduction made from their pay for time absent because of bona fide case of sickness:
1. Upon completion of one calendar year of continuous service under the rules of this Agreement, a total in the following year of five working days.
 2. Upon completion of two calendar years of continuous service under the rules of this Agreement, a total in the following year of seven and one-half days.
 3. Upon completion of three calendar years of continuous service under the rules of this Agreement, a total in the following year of ten days.

In order to qualify for a sickness allowance in the current calendar year, the employee must have had 100 days' compensated service in the preceding calendar year (including also sick days as provided in paragraph (h), Article 1 of National Vacation Agreement.) For an extra board employee, work days available and not used will be counted in arriving at the 100-day qualification. This qualification requirement will not be applicable to use of accumulated sick leave days carried over and unused from previous calendar years."

It is the position of the Organization that prior to May 30, 1985, the Claimant had completed "one calendar year of continuous service under the rules of (the) Agreement," and was eligible for sick leave benefits in accordance with Rule 40. The Claimant has a hire in date of February 23, 1981. In its original claim the Organization argued that the Claimant, after being "furloughed in May of 1982, (was) called back from furlough (in) October of 1983 and has worked continuously since then" with the following exception. She took a maternity leave in March of 1984. This was for six weeks. The Organization argued that under the Pregnancy Discrimination Act "...seniority and service credits (continue) to accrue...." In denying the claim, the Carrier argues that the Claimant had not completed "one continuous calendar year of service in 1982, 1983 or 1984 and could not qualify for paid sick leave" on the date in question in 1985.

The instant case centers on whether the pregnancy leave taken by the Claimant in 1984 interrupted her "one continuous calendar year of service." The Carrier argues that both federal law and its own policy treats "pregnancy ... the same as disabilities caused or contributed to by other medical conditions..." and if the Claimant had been on sick leave rather than a maternity leave the year of 1984 "would still be treated as a non-qualifying year." As a preliminary point the Board notes that the Agreement at Rule 40 explicitly uses the language: "calendar year." Normal construction of that language would mean January through December of any given year and the Board believes that the Carrier is correct in so construing this language. Secondly, the distinction between a "continuous employment relationship" and "continuous service" must be made. It is clear from the line of reasoning used by the Organization that it wants these two to be synonymous. The Board believes they are not. Pregnancy leave benefits found in federal law, and in Carrier policy, provide that such leaves will not interrupt the "continuous employment relationship," but as a defined disability, such leaves clearly interrupt "continuous service." The Claim cannot, therefore, be sustained.

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Award No. 27951
Docket No. CL-27335
89-3-86-3-551

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 6th day of June 1989.