

The Third Division consisted of the regular members and in addition Referee Martin F. Scheinman when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(Bessemer and Lake Erie Railroad Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood (GL-10097) that:

1. Carrier violated the effective Clerks' Agreement when it failed to compensate Mr. W. Beatty for a portion of the day on September 18, 1984, during which he was absent from work due to personal illness;
2. Carrier shall now compensate Mr. Beatty three (3) hours' pay at the rate of his position for September 18, 1984, and shall allow him credit for one and one-half hours of personal leave in addition to any current allowance."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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 September 7, 1984, Claimant was examined at Western Pennsylvania Hospital for treatment of swelling in the groin area. At this time it was detected that he was suffering from hypertension and was instructed to consult his regular physician.

On September 18, 1984, Claimant advised his supervisor that he would need to be relieved of duty at noon for an appointment with his physician. Claimant was allowed 1 1/2 hours pay as personal leave which was the extent of his remaining allowance; he was denied compensation for the remaining three (3) hours.

The Organization alleges that Carrier violated Rule 18-Sick Leave of the Agreement by the denial of Claimant compensation for his absence. It maintains that Paragraph (g) provides for use of sick leave allowance in cases such as this dispute. That language states:

"employees...who are absent a portion of a work-day...will receive full compensation for that day, and...will have the time actually absent charged against their benefit entitlement, rounded to the nearest whole hours."

The Organization argues that the portion of the day that Claimant was absent was due to him having been instructed to consult his personal physician for follow-up care. In its view, this qualifies him for sick allowance.

Carrier, on the other hand, maintains that Claimant's absence for a doctor's appointment for follow-up treatment does not meet the criteria for sick leave benefits. Instead, it argues that the circumstances in this dispute are such that it is covered by personal leave allowance. Due to the fact that Claimant did work a portion of the day in question, Carrier concludes that he was not absent due to being physically unable to work. It alleges that the provisions of the Sick Leave Rule clearly apply to "bona fide cases of sickness and off duty injury." Carrier asserts that this absence does not satisfy such requirement. Accordingly, Carrier asks that the claim be denied.

A careful review of the record evidence convinces us that the claim must be sustained. Carrier alleges that an absence due to a doctor's appointment does not constitute eligibility under the provisions of Sick Leave Allowance, but instead falls under the Personal Leave Rule. We disagree. Claimant was examined in a hospital emergency room and was instructed to consult his personal physician for follow-up treatment. At this appointment, he underwent a series of lab tests and prescribed medication for hypertension. The proper documentation was submitted to Carrier as evidence of his condition. There exists several exceptions in the language regarding sick leave benefits, but no reference to scheduled doctors' appointments is included within those exceptions. As such, Carrier cannot unilaterally establish this exception.

Accordingly, we find that Claimant's absence due to a doctor's appointment is compensable as sick leave and the claim must be sustained.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Deves - Executive Secretary

Dated at Chicago, Illinois, this 29th day of June 1989.