

The Third Division consisted of the regular members and in addition Referee Rodney E. Dennis when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(
(National Railroad Passenger Corporation (Amtrak)

STATEMENT OF CLAIM: "(Carrier's File No. TCU-TC-2992/ TCU File No.
393-68-011)

Claim of the System Committee of the Brotherhood
(GL-10389) that:

1. Carrier, acting in an arbitrary and capricious manner, violated Rules 19, 24, and other related rules of the Agreement when, starting with her August 26, 1988 pay check and from several paychecks thereafter issued to Claimant, Ms. Annie Gibbs-Johnson, it deducted fifty dollars (\$50.00) and informed her that the deductions are made to recover overpayment to her of eight (8) days' sick leave allowance during calendar year 1987.

2. Carrier shall now be immediately required to discontinue such payroll deductions from Claimant's pay and to reimburse her the total amount of all such deductions which have been made and which may be made from future paychecks."

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.

Claimant was hired as a new employee on July 1, 1984, to work as a Train Attendant. She transferred to a Ticket Clerk position on May 27, 1987. She was covered under an Allied Services Agreement as an On Board Service employee and covered under the TCU Agreement as a Ticket Clerk.

From September 18, 1987, until December 10, 1987, Claimant was on a medical leave. During that leave, Carrier paid her eight days sick leave. Carrier subsequently decided that it had improperly paid Claimant sick leave benefits and took action to recover the erroneous payments by deducting \$50.00 per paycheck from her pay, beginning August 26, 1988. The Organization took the position that Claimant was due sick leave and that the recovery of money from her pay was improper. A Claim was filed, which was denied by Carrier. It has been placed before this Board for resolution.

Initially, the Board notes that the Carrier has included in its Submission to this Board, evidence and arguments which were not advanced by the Carrier on the property, and such materials have not been considered by the Board consistent with past Awards (Third Division Awards 24494, 22054, 21463, 20841 and 20178).

Carrier in this instance has taken the position that an employee must work in three calendar years as a TCU covered employee to be eligible for ten days sick leave allowance authorized under that Agreement. It relies on the following language from Rule 19 to support its position:

"RULE 19

In the calendar year in which an employee first becomes entitled to a vacation, he/she will receive a sick leave allowance of 5 days.

In the second calendar year in which an employee is entitled to a vacation he/she will receive a sick leave allowance of 7 1/2 days.

In the third calendar year in which an employee is entitled to a vacation, he/she will receive a sick leave allowance of 10 days."

The Organization, on the other hand, is also relying on the leave portion of Rule 19 to support its position. It contends that the language is clear on the point at issue. It states that "In the third calendar year in which an employee is entitled to a vacation, he/she will receive a sick leave allowance of 10 days." Claimant had been employed by Carrier since 1984. She had worked in three calendar years and was therefore eligible for ten days sick leave.

This Board has reviewed the position of each party and concludes that the Organization presents the more supportable arguments. Rule 19 states that an employee in the third year in which he or she is eligible for a vacation will receive ten days of sick leave. Claimant was in her third year with Carrier; she was eligible for her third vacation (two weeks) in 1987. Rule 19 grants her ten days sick leave as well. This Board cannot write into Rule 19

restrictions that do not appear there. If the parties intended that the three calendar years in which an employee received a vacation in order to be eligible for ten days sick leave must be covered under the TCU Agreement, rather than simply being employed by Carrier, in general they could have and should have stated that requirement. Absent such a modification, the literal language of Rule 19 must be applied.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 29th day of August 1991.