

The Third Division consisted of the regular members and in addition Referee John B. LaRocco when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(CSX Transportation, Inc.
(Formerly The Louisville and Nashville Railroad Company)

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
(GL-10434) that:

1. Carrier violated the Clerical Agreement at New Orleans when it failed and/or refused to compensate Clerk L. L. Spencer for three (3) days supplemental sick benefits on his return to work after having been off sick January 17, 18 and 19, 1989.

2. As a result of the above, the Carrier shall be required to compensate Mr. Spencer a total of twenty-four (24) hours' sick pay for January 17, 18 and 19, 1989."

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, a regularly assigned Clerk at New Orleans, Louisiana, marked off from work due to illness on January 17, 18 and 19, 1989.

Upon his return to work, the Assistant Trainmaster requested Claimant to furnish satisfactory evidence showing his illness was bona fide and necessitated an absence from work. On January 25, 1989, Claimant wrote that he had suffered from the flu and spent the days he was absent in bed, drinking juices and taking aspirin. Claimant also stated that he did not have any documentary evidence to verify his illness, so he could only give the Trainmaster his "word" that he had been truly ill.

On January 27, 1989, the Assistant Trainmaster informed Claimant that his application for sickness pay was denied because the only satisfactory evidence of his illness would be a physician's note.

Rule 44(h) provides:

"No payments shall be made under this rule unless the employee's sickness is bona fide and of sufficient severity to require an absence from work. Satisfactory evidence as to sickness will be required in case of doubt."

Unlike similar provisions on other properties (see Fourth Division Award 3727 cited by the Carrier), Rule 44(h), standing alone, does not expressly compel the ill employee to submit a physician's statement substantiating the genuineness of a sickness. Indeed, the Assistant Trainmaster did not specifically demand that Claimant provide a physician's note until after Claimant had already informed him that he lacked any documentary verification of his illness.

Since the Carrier was not going to excuse Claimant without a doctor's note, it should have placed Claimant on notice that whenever he was absent in the future, he must supply a doctor's statement. Absent some warning, Claimant did not presumptively violate Rule 44(h) merely because he did not seek medical treatment for a short, minor illness.

The Carrier argued that Claimant had been given "prior handling" but it failed to elaborate on the nature of the "prior handling." This Board may not assume that the Carrier counseled Claimant about excessive absenteeism or warned him that he needed to have a physician's note if he was absent in the future. Also, there is nothing in the record to suggest that Claimant has engaged in a pattern of abusing sick leave benefits.

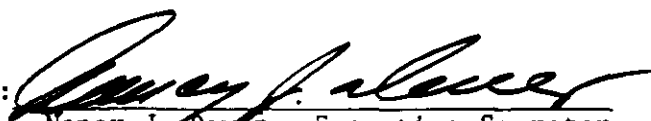
Under the peculiar circumstances of this case, Claimant's January 25, 1989 note constituted satisfactory evidence of his illness and absence from work. The Carrier shall compensate Claimant for twenty-four hours of sick pay.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dexter - Executive Secretary

Dated at Chicago, Illinois, this 3rd day of April 1992.