

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30133
Docket No. TD-29184
94-3-90-3-44

The Third Division consisted of the regular members and in addition Referee Gil Vernon when award was rendered.

PARTIES TO DISPUTE: (American Train Dispatchers Association
(
(National Railroad Passenger Corporation
(Amtrak)

STATEMENT OF CLAIM:

"(a) The National Railroad Passenger Corporation ("Carrier") violated Item I.(b) 3 of the January 1, 1977, Sick Leave Agreement, as amended by the August 20, 1982 Letter Agreement, when effective October 8, 1988, it commenced making certain deductions from Train Dispatcher J.B. Owings's weekly pay checks in recovery of amounts previously allowed him as Sick Leave benefits for August 11, 12, 13, 14, 17, 18, 19, 20, 21, 1988.

(b) Because of said violation, the Carrier shall now compensate Claimant J.B. Owings amounts equivalent to the total amounts deducted from his weekly pay checks described in paragraph (a) above, plus interest at the rate of ten percent (10%) per month."

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 employe 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.

The Claimant is a Train Dispatcher who, following a three-week vacation, was scheduled to work August 10-14 and August 17-21, 1988. However, he called in and marked off due to illness for

these days. He returned to work August 24, 1988. Thereafter he applied for and was granted sick leave for the days in question.

On September 7, 1988, the Carrier asked the Claimant to provide a doctor's note to cover his being marked off. The Claimant wrote the following response to the request:

"I have received your letter and would like to comply, however, while out sick I did not see a doctor. I would be unable to get a doctor's note because no doctor would give me a note now, one month later. Therefore, instead of getting a bogus note I hope this letter should suffice."

Ultimately the Carrier recouped the \$1,252.26 that it had already paid the Claimant because he failed to provide the requested medical documentation.

There can be no serious question that the Carrier may request its employees to provide medical verification that an absence is due to sickness. See Award 1 of Public Law Board No. 4616, a dispute which validated the Carrier's absenteeism policy. The portion of that policy relevant to this dispute reads as follows:

"Regardless of the number of absences, when an employee is absent an extended period or when a pattern becomes visible, i.e., the days preceding or following rest days or a specific day of the week, such cases will be reviewed by the supervisor and the employee may be required to furnish medical documentation of the nature, treatment and ability to fulfill the requirements of service if such absences are attributed to sickness."

The critical question, in the Board's view, is not if the Carrier can request medical verification, but when. It is our firm opinion that the timing of the Carrier's request in this case was unreasonable. As such, it was not justified in recouping the Claimant's sick leave. The Carrier did not ask for the doctor's documentation until two weeks after he returned and four weeks after he first laid off. If the Carrier wanted the Claimant to verify his illness by a visit to the doctor, then it was incumbent upon the Carrier--by the force of reason--to direct him to do so sometime prior to his return to duty. An examination two weeks later would prove nothing as to his state of health during the layoff period. It would be difficult, if not impossible, for a doctor to certify an illness after the fact. Indeed, if the Claimant had been directed during the illness to provide a report and he had provided a report based on an exam two weeks after the

illness, we are confident the Carrier would argue that such an examination was not probative as to the legitimacy of his illness.

It is odd for sure that the Claimant would not have seen a doctor during his absence. However, it is not entirely implausible for someone to be too ill to work, but not ill enough to feel that a trip to the doctor would be helpful. There are lots of chronic illnesses or viruses that might cause someone to conclude that a doctor was not necessary. Not all incapacitating illnesses are acute enough to require medical attention.

The Carrier did argue that the Claimant should have known he would have to verify his illness. However, there is no evidence to support this speculation. The Carrier had no announced policy or practice of requiring such documentation in every case.

Accordingly, the claim is sustained except for that portion regarding interest.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Catherine Loughrin / lw
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 4th day of April 1994.