

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 31939
Docket No. CL-32694
97-3-95-3-601

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

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

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (CL-1 1192) that:

(a) On or about November 5, 1993, Supervisor G. **Gillis** did approve bereavement leave to Claimant Lena F. Johnson for the dates of November 9 and 10, 1993, so that she could attend services for a family member. Upon the Claimant’s return to work she was told that she would not be paid for the above dates because payroll had called and said that the days did not follow the rules in the bereavement rule.

(b) Claimant was misled by her supervisor in this case and should not have to suffer any loss. Claimant should now be allowed sixteen hours pay at the rate of **\$13.54** per hour on account of this mistake.

(c) This grievance is presented in accordance with Rule **25** of the Amtrak Corporate Agreement and should be allowed.”

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 employee 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 were given due notice of hearing thereon.

At the time of the incident giving rise to this **claim**, **Claimant held a** Clerk-Typist position in the Graphics Department. **Her** workweek was Monday through Friday, with rest days on **Saturday** and Sunday. On or about November **4, 1993**, Claimant requested bereavement leave due to a death in her immediate **family and was granted it**. Claimant's leave began on November 5, 1993. The date of the funeral was Saturday, **November 6, 1993**. **Claimant also** marked off on November **8, 9**, and 10, 1993 as follows: excused absence (unpaid) on **November 8** and 9, and personal leave day (paid) on November 10. Claimant was compensated her normal rate of pay for the date of November 5, 1993. She **was** not compensated for either of her rest days - November 6 and 7, 1993.

The applicable Rule in this case is **Rule 20--Bereavement Leave**. That Rule reads in pertinent part as follows:

"Bereavement leave, not in excess of three (3) calendar days, will be allowed in case of death of an employee's brother, sister, parent, child, spouse or spouse's parent. In such cases a minimum basic day's pay at the rate of the last service rendered will be allowed for the number of working days lost during bereavement leave. Employees involved will make provisions for taking leave with their supervising officials in the usual manner. Any restrictions against blanking jobs or realigning forces will not be applicable when an employee is absent under this provision.

An employee will have the following options in deciding when to take bereavement leave:

(a) three consecutive calendar days, commencing **with the day of** death, when the death occurs prior to the time **an employee is scheduled to report for duty**;

(b) **three consecutive calendar days, ending the day of the funeral service; or**

(c) three consecutive calendar days ending the day following the funeral service.”

At the crux of this claim is the fact that Claimant's Supervisor initially granted Claimant the days of November 9 and 10, 1993, as bereavement leave days, but later corrected that decision in light of Rule 20 (above). The Organization maintains that by initially granting approval for November 9 and 10, 1993, Claimant's Supervisor waived the provisions of Rule 20. However, unrefuted evidence on this record indicates that the Supervisor took Claimant's word, as a TCU representative of the employees in the Reprographic Department, that she was entitled to claim November 9 and 10, 1993, as bereavement leave. Once the Payroll Department informed him that her information was incorrect, Claimant's Supervisor made the change and informed her upon her return that she would not be compensated for those two days.

The clear language of Rule 20 supports the Carrier's position. Further, Claimant, perhaps unwittingly, misinformed her Supervisor concerning her eligibility for bereavement leave payment. She cannot now expect to profit from that action.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 4th day of March 1997.
