Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 32984
Docket No. CL-33736
98-3-97-3-202

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

PARTIES TO DISPUTE: (Transportation Communications International Union
(Burlington Northern Railroad

STATEMENT OF CLAIM:

"Claim of the System Committee of the Organization (GL-11718) that:

1. Carrier violated Rule 55 of the Working Agreement when it failed and refused to compensate clerical employe D. Newell the amount of his sick leave benefit for July 25, 1995.

2. Carrier will now be required to make such compensation to Mr. Newell in the amount of $100.84."

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.

On July 25, 1995, Claimant D. Newell claimed that he had a stomach ailment and left a message on his Supervisor's voice mail that his illness prevented him from

working. On July 26, 1995 Claimant returned to work and presented a claim for sick leave payments for July 25. On July 31, 1995 Claimant's Supervisor advised that he doubted the illness, and asked that Claimant furnish a certificate verifying the illness. Further exchanges occurred between the two, without sick leave payments being allowed. The matter was made the subject of a claim that was appealed to this Board.

The Board finds two issues in this claim, one the matter of requiring employees to notify a Supervisor directly, and not use its voice mail system when marking-off their assignments because of illness; the other, timeliness - whether verification for an illness can be required several days after an employee returns to work.

Looking at the voice mail question first, it is noted that Claimant's Supervisor has published instructions requiring:

> "SICK LEAVE GUIDELINES
>
> Please notify me at 333-1940, not the voice mail system, prior to the start of work so that you normal assignments can be realigned if necessary."

In this matter Claimant says that on July 25, he tried to reach his Supervisor three times and each time when the Supervisor personally did not answer the phone, Claimant was automatically transferred to Carrier's voice mail system. It was only during the third attempt that Claimant opted to leave a message on the voice mail system. In the Board's experience voice mail systems can be, and often times are, very useful modern tools of communications. On occasion, however, voice mail systems are frustrating because one is never able to communicate with a live person - call after call is "slammed" to an answering device, without regard to urgency or immediacy In this case the Supervisor has a directive that sick leave requests are not to be placed in his voice mail, yet the number to call for sick leave requests automatically, after a few rings, goes to his voice mail. This is a "Catch-22" and had ought not be a basis for rejection of sick leave benefits. If the voice mail system is responsible for accepting one's calls it should be responsible for accepting all calls, including sick leave requests, unless some other arrangements are made. In today's world it may be assumed that a message left on a voice mail device will be picked up promptly. If one relies on voice mail to accept incoming calls then the message of an incoming call must be considered delivered at the time it is given.

Turning next to the matter of verification. This Board has been faced with this issue before. It was succinctly addressed in Third Division Award 30133. There we stated:

> "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. 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 had 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 illness are acute enough to require medical attention."

Nothing has been presented in this record to indicate that Award 30133 is not correct. It will be followed here.

The claim has merit.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 23rd day of December 1998.