

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33907
Docket No. CL-33988
00-3-97-3-523**

The Third Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

**(Transportation Communications International Union
PARTIES TO DISPUTE: (
(Springfield Terminal Railway Company**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (G-11800) that:

- 1. Carrier violated Rules 30.1-2-5 Sick Leave, of the Agreement dated December 31, 1995, when it refused to buy back ten days unused sick leave, as requested by Claimant P. K. Foley on February 16, 1996.**
- 2. Carrier should be directed to comply with the terms of the Agreement and buy back ten days of accumulated sick leave, as requested.”**

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.

This claim involves the interpretation of a new sick leave buy back provision negotiated by the parties into their Agreement effective December 31, 1995. The relevant portions of Rule 30, Sick Leave, are reprinted below:

“30.2 The sick leave benefits to which Employees would be entitled under Paragraph 30.1 above will be cumulative to the extent that unused sick leave from previous years may be accumulated to a maximum of 30 days.

* * *

30.5 At the Employees' option, the Carrier will buy back any sick leave days which remain unused at the end of each calendar year (not to include any sick leave days accumulated from previous years). Payment for unused sick leave days will be 8 hours at 50% of the applicable straight time rate and will be made by April 1st of each year.”

Rule 30.1 provides for a certain number of sick benefit days to be given to employees each calendar year based upon the employees' years of service. That provision, as well as the language of Rule 30.2 printed above, are substantially the same as what had been in effect under the predecessor Agreement. Rule 30.5 is new to this Agreement, and became effective upon its signing on December 31, 1995. The parties attached an agreed-upon form to be used for the sick leave buy back as an Appendix to their Agreement.

Claimant submitted the proper form on February 16, 1996 with his request for the buy back of his ten sick days accumulated for calendar year 1995 and unused during that period. Carrier informed Claimant on February 27, 1996 that it would not buy back those days since they were accumulated under the old Agreement. The Organization appealed this decision on April 25, 1996, and the matter was discussed in conference on September 24, 1996. By letter dated October 2, 1996, Carrier denied the claim as an improper attempt to apply the sick leave buy back provisions of the new Agreement to sick leave accrued under the previous Agreement. Thereafter, the parties agreed to hold numerous other claims in abeyance pending the resolution of this matter by the Board.

The Organization contends that the language of Rule 30.5 is clear and unambiguous, and obligates Carrier to buy back unused sick leave at the end of each

calendar year, not to include the amounts accumulated in previous years. It notes that Carrier signed the Agreement on December 31, 1995 and it became effective on that date. The Organization argues that Carrier could have signed the Agreement on January 1, 1996, if it did not wish calendar year 1995 to be considered under Rule 30.5, but it did not do so. The Organization also submitted a letter dated January 5, 1996, from its Vice General Chairman to Carrier Human Resources Representative attaching a draft form for submission of sick leave buy back under Rule 30.5, with certain handwritten changes, one of which says "1995 will be 3/1/96," arguing that this indicates an intent to include 1995 sick leave under this provision.

Carrier initially objects to the Board's consideration of the January 5, 1996 letter, noting that it was not exchanged on the property. Carrier argues that the Organization failed to meet its burden of proving that the parties intended to have the new buy back provision cover a period of time prior to when the Agreement was in effect, and asserts that the language shows an intention to be prospective only. Carrier avers that the Organization never refuted Carrier's intention argument on the property, failed to introduce any evidence of bargaining history, and relied solely on the language of Rule 30.5. It contends that the Organization's argument results in an unreasonable interpretation, since it is unlikely that a December 31, 1995 Agreement was intended to impact all 1995 sick leave which accrued on January 1, 1995 under the predecessor Agreement.

The Board initially notes that it is obliged to consider only evidence that was exchanged by the parties on the property. While it is possible that the January 5, 1996 letter was part of the parties' attempt to arrive at an agreeable form for submitting an employee's Rule 30.5 buy back request, it was not included in the on-property correspondence regarding this claim. If it is submitted by the Organization as evidence of the parties' intent with respect to coverage of Rule 30.5, it certainly should have been part of its correspondence in progressing this claim on the property. Further, without reference to such draft proposal on the property, it is impossible for the Board to know who made the handwritten notation being relied upon by the Organization. It is clear that the draft form contained in the letter is not the same as the one eventually attached to the Agreement as a Appendix and used by Claimant in this case. Under all of these circumstances, the Board finds the January 5, 1996 letter and attachment to be unhelpful and has not considered it in rendering its decision herein.

After a careful review of the record, the Board finds that the intention of the parties with respect to the coverage of Rule 30.5 must be ascertained from the agreed-upon language used in the Agreement only. Neither party has introduced any evidence concerning the parties' discussions during negotiations which would bear upon their intention with respect to buy back of previously accrued sick leave. Carrier's position in its denial of the claim that the new Rule 30.5 buy back provision does not apply to sick leave earned under an Agreement not containing such provision is just that, its position. It cannot be considered a fact requiring specific Organization rebuttal. By progressing the claim, the Organization continued to affirm its disagreement with Carrier's position. Thus, we do not find that this record contains relevant facts which are undisputed with respect to the proper interpretation of Rule 30.5.

There is no dispute that the 1995 sick leave submitted by Claimant for buy back accrued under the previous Agreement. Under the scheme of both the prior and December 31, 1995 Agreements, employees are permitted to accumulate unused sick leave and carry it over from year to year up to a maximum of 30 days. Thus, the parties acknowledged that sick leave earned under one Agreement could become an entitlement for use under a subsequent Agreement. The language used in Rule 30.2 refers to the accumulation of sick benefits "from previous years". It does not mention prior Agreements. Yet, there has been no argument in this case that an employee's sick leave can only be accrued from year to year throughout the term of a single Agreement.

Similarly, in Rule 30.5, the parties agreed that, upon request, Carrier would be obliged to buy back unused sick leave days "at the end of each calendar year", specifically excluding "any sick leave days accumulated from previous years." There is no limitation of the buy back as applicable only to sick leave earned under the current Agreement and not that which has accrued under the previous Agreement and carried over pursuant to Rule 30.2. The specific exclusion in Rule 30.5 applies to accumulated sick days from "previous years", not previous Agreements.

While Carrier may not have realized that by signing the Agreement on December 31, 1995 and making it effective on that date, it was limiting the exclusion to years prior to 1995, rather than years prior to 1996, the first full calendar year after the effective date of the Agreement, under the language chosen by the parties in Rule 30.5, and consistent with the entire scheme contained in Rule 30, the Board must find that it has effectively done so. Since there is no dispute that the 1995 sick benefit can accrue as an active benefit under the terms of the new Agreement under Rule 30.2, we conclude that,

under the specific language of the Sick Leave provision in this Agreement, Carrier's buy back obligation commenced in calendar year 1995 and excludes all sick leave accrued by employees in years prior to that.

Accordingly, the claim is sustained. Carrier is directed to pay Claimant for eight hours of each of his ten unused sick leave days in 1995 at the rate of 50% of his applicable straight time rate.

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 24th day of January, 2000.