

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Paul W. Richards, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

**CHICAGO, ST. PAUL, MINNEAPOLIS & OMAHA
RAILWAY COMPANY**

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

"(1) The Carrier violated agreement rules when it failed and refused to allow Henry G. Olson, Janitor-Fireman, Minneapolis Freight Station, sick leave compensation for April 22, 1939, and

"(2) That Carrier shall be required to reimburse Henry G. Olson, for April 22, 1939, amount of \$4.39."

EMPLOYEES' STATEMENT OF FACTS: "Henry G. Olson, Janitor-Fireman, Minneapolis Freight Station, shown on Class 2 Minneapolis Station Seniority Roster with date of April 5th, 1923, was absent account illness on April 22d, 1939.

"His position was blanked on that date, no other employee being assigned to fill same during such absence.

"Employees are assigned to this position by Bulletin, therefore same comes within the provisions of Rule 62.

"Claim has been duly filed and appealed to the highest designated officer as set forth above in Statement of Claim.

"Carrier has declined Employees' suggestion of Joint Submission to this Honorable Board. See Exhibits A to D inclusive.

"Employees have designated this claim as BRC No. 28. See Exhibit E.

"Rules 51 and 62 of current agreement dated and effective July 16th, 1926, read as follows:

'RULE 51—Sick Leave—Employees will be granted time off on account sickness or for other good and sufficient reasons with pay, providing the work is kept up without additional expense to the Railway Company—the supervising officer to be the judge as follows:

(a) Employees who on January 1st have been in the service one year and less than two years—one week or six working days.

(b) Employees who on January 1st have been in the service two years or more—two weeks or twelve working days.'

POSITION OF CARRIER: "The Carrier has indicated to your Board that in the absence of Mr. Olson, his work in connection with the care and operation of the heating boilers on April 22, 1939, was assigned to, and performed by Mr. Fred Lundhagen between the hours of 1:00 P. M. and 6:32 P. M., a trucker carrying a higher rate of pay than Mr. Olson, and it is a fact that the Carrier paid Mr. Lundhagen this higher rate for the time consumed by him in performing the work he did on Mr. Olson's assignment on the date in question. Therefore, it cannot be maintained that Mr. Olson's position was not filled by another employe and that to keep up the work and operate the boilers the Company did not have an additional expense in connection with the operation of the boilers—a part of Mr. Olson's assignment. Also, the Carrier would state that no employe kept up the janitor work assigned to Mr. Olson on the date in question, and for this additional reason the claim is without merit.

"The Carrier would, therefore, ask that for the reasons as shown in the Statement of Facts and Position, that the claim be denied."

OPINION OF BOARD: The claimant, Harry G. Olson, name shown on Class 2 Seniority Roster with date of April 5, 1923, held an assignment as janitor-fireman in the Minneapolis Freighthouse. On account of his sickness he did not work the assignment on April 22, 1939. A part of his assigned work on that day, i. e., the caring for and operating low pressure boilers used for heating the buildings, was performed by one of the truckers employed at the same freight house. This trucker appeared on the Class 2 Seniority Roster. His position was rated at \$4.40 per day, claimant's at \$4.39 per day. The remainder of claimant's duties he performed upon his return to work. Claimant's absence did not result in the employment or payment of additional help, nor payment of any overtime. On these facts Petitioner affirms that Claimant was entitled to time off with pay for this day under Rule 51. The carrier denies any obligation on its part, taking the position that the time taken by the trucker for firing the boilers was time taken from his regular job of trucking on this day, and as the number of truckers is governed by the volume of the work, the taking of the trucker from his regular work resulted in a diminished volume of the remaining force, thus eventually resulting in additional expense to the Company. Carrier's conclusion is that the work was not "kept up without additional expense to the Railway Company," as it must be under Rule 51 in order that the employe be entitled to time off with pay.

The rule itself contemplates two alternative possibilities. The first is that the work may in fact be kept up without additional expense to the carrier. The second is that the keeping up of the work may in fact not be without such additional expense. No presumption in favor of either possibility is suggested in the rule. Rather, the sole criterion is the fact of absence of additional expense, or on the other hand the fact of existence of additional expense. In the instant case the docket shows that there was no additional expense in the sense of additional expenditures by the carrier, which in the opinion of the Board is the meaning the the word "expense" was intended to have in this rule. Accordingly the Board is of the opinion that within the terms and intentment of Rule 51, the work was kept up without additional expense to the Railway Company. To substitute, for a showing of actual or demonstrable "additional expense" or expenditures, a theory or assumption that eventually there may have been caused some undisclosed detriment to the carrier by reason of the trucker doing the firing would be, in the opinion of the Board, unwarranted by anything we find expressed or fairly implied in the rule. In the opinion of the Board this conclusion is consistent with United States Railroad Labor Board's decisions Nos. 3804, 3828, Third Division Awards Nos. 195, 399. The Board is of the further opinion that, on the question that is in this case, i. e., whether on the day in question there was additional expense occasioned by the absence of the claimant, it is immaterial that the trucker's position was rated at \$4.40 per day and claimant's at \$4.39 per day.

Carrier claims that Rule 51 has never been extended beyond Class 1 employees. But in the rule itself there is no limiting to any class. Its language is "Employees will be granted time off" in the manner provided in the rule. In Rule 62 of the same Schedule of Agreements there is a distinction made between classes to which it is applicable. Not so in Rule 51. In the opinion of the Board the rule is an agreement that in terms is inclusive of Class 2 Employees, and nothing in the docket warrants adoption of any other intendment.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the carrier and employe involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the refusal to grant Claimant time off on account of sickness with pay on the date in question was violative of Rule 51.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 17th day of July, 1941.