Award No. 2422
Docket No. CL-2404

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Howard A. Johnson, Referee

PARTIES TO DISPUTE:

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

DETROIT, TOLEDO AND IRONTON RAILROAD COMPANY

STATEMENT OF CLAIM: (a) Claim of the System Committee of the Brotherhood that the Carrier violated its agreement with this Brotherhood when it refused to pay Clerk C. W. Hensel, Cashier at the Springfield, Ohio, freight station, for time lost account of personal illness, amounting to eight (8) hours each on October 14, 15, and 16, and four (4) hours on October 17, 1941, and

(b) That the Carrier shall now be required to make payment to the estate of Mr. Hensel of wage loss suffered by reason of bona fide illness, less such amounts as were paid to other employes in overtime in keeping up the work of his position which could not be deferred.

EMPLOYES' STATEMENT OF FACTS: The station force at Springfield, Ohio, subject to the scope and operation of the clerks' agreement on October 14, 1941, was:

Classification	Occupant	Daily Rate	Hours of Assignment
Chief Clerk	J. C. Ogle	$7.82	—
Cashier	C. W. Hensel	6.25	8:00 A.M. to 5:00 P.M. (1 hour for lunch)
Rate and Bill Clerk	J. E. Keister	6.06	10:00 A.M. to 7:00 P.M. (1 hour for lunch)
Demurrage Clerk	F. C. Cronacher	5.28	7:00 A.M. to 4:00 P.M. (1 hour for lunch)
Warehouseman & Clerk	R. J. Welch	5.28	—
Trucker	R. S. Glassner	4.68	—
Trucker	Logan High	4.68	—

The above rates of pay were those in effect on September 1, 1941, the effective date of the current agreement, governing rates of pay, hours of service, and working conditions, and do not include the wage increase of 1941.

On October 9, 1941, Clerk C. W. Hensel, occupying the position of Cashier, took ill and left the station at 2:00 P. M. which was three (3) hours before his regular tour of duty ended, and, as of his own choice, no claim was filed under the sick rule for the three (3) hours. Mr. Hensel returned to work at the regular time on October 10th and worked the 10th, 11th, and Monday, the 13th. He was unable to work on October 14th, 15th, 16th, and the morning of the 17th, but reported at noon on the 17th.

"Employes who do not work their full designated hours, either at their own request or for reasons beyond their control, but for which Management is not responsible, shall be paid for actual time worked."

Responsibility for getting the work done rests with the Management who shall determine the number of employes required. Each employe is expected to give a good day's work for each day's pay, but no employe is expected or required to work overtime voluntarily to keep up his work. The Management shall determine when overtime is necessary and authorize it and when properly authorized pay punitive rates therefor. The Employes have stated that when Mr. Hensel returned to work after his absence on account of sickness he worked overtime to catch up his work. If Mr. Hensel worked overtime he did so voluntarily. He was not required or authorized to work overtime.

When the present contract was negotiated there was considerable controversy over a sick leave rule. The Employes wanted to continue the past practice as to sick leaves only, indicated above. In view of the daily rates, punitive overtime rates, Sunday and Holiday rule, and other restrictions, limitations and penalties the Management demurred and the present sick leave rule was adopted.

The Carrier repeats that payments to employes while off sick are gratuitous contributions and not payments for work performed. It might be claimed that under Rule 60 payments are made to sick absentees only when their work is kept up by other employes without cost to the Company, and therefore, payments for sick leave are for work performed. But such a claim would not be well founded. Quite often when an employe is off a day or two on account of sickness or for other reasons the work is kept up by the balance of the force without overtime. Where a force of employes work together, such as at a station or in an office, there is a certain amount of elasticity as well as busy and slack periods. It has been our experience that most short periods of absence can be absorbed without extra work. If the pay of employes while absent account of sickness was earned compensation instead of being a gratuity, such compensation would not depend on the length of service and the number of days worked in the previous year as provided in Rule 60.

A rule for the payment of employes while absent from duty coupled with a rule for punitive overtime is subject to abuse which is the reason for incorporating in Rule 60 the provisions that the absentee's work must be kept up by other employes without cost to the Company and the absentee must be sick in good faith.

Claimant, C. W. Hensel is deceased. The Carrier questions the right, by law and under the contract, of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes to represent his estate. The Railway Labor Act confines its provisions to employes of the Carrier's and not to the estates of former employes. The law provides other representation for the estates of deceased persons. It is a well known rule of law that the death of a contracting party brings that contract to an end.

By a reasonable application of the wording of Rule 60 and the clear intent and purpose of the contracting parties as manifested by the contract as a whole, this claim should be denied.

OPINION OF BOARD: It is admitted that if the employe in question had not been absent on account of sickness he would have earned $24.70, that portions of the work were done by employes on overtime for which they were paid $13.40, and that the balance of the work was done during regular hours either by the employe after his return to work or by other employes during his absence. The claim is that the balance of $11.30 should under the rule be paid to the estate of the deceased Employe.

Rule 60 provides that "compensation for time absent on account of bona-fide sickness" shall be allowed (subject to length of continuous employment) where the work of the employe "is kept up by other employes without cost to the Company."

Various awards have been cited by the parties. While the rules concerning pay for sick leave vary widely in the various agreements, it is their obvious intent that so far as possible both the employe and the carrier shall be protected against loss because of the employe's misfortune in becoming ill, and that up to certain time limits the sick employe shall receive his pay if the carrier is not thereby paying for the same work twice. Regardless of the particular words used in the various agreements, there can be no doubt that the intent and general understanding of the rule are as above stated.

The Carrier contends that no part of the pay should go to the sick employe if there has been any other expense whatever to the Company, as in the present instance by overtime pay to certain employes for performing part of the work. The words of the rule can be so construed if we ignore the manifest purpose of the rule and the further consideration that under that construction the Carrier can in any instance nullify the rule by employing another employe for just a few minutes. By thus voluntarily incurring a small expense, the Carrier could profit to the extent of the difference between what it pays and what the sick employe would have received but for his illness. It does not seem reasonable that any such result could have been intended, for in that event the rule could be of little value.

The further contention is made by the Carrier that the employe having died, this Board has no power to direct payment of an award to his estate; that matter has been decided otherwise by Award 1521 by this Division and Awards 1342, 5550 and 8298 of the First Division of this Board.

It is our conclusion that the claim should be sustained.

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 the 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 Carrier has violated the Agreement.

AWARD

Claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 17th day of December, 1943.