

Award No. 2981

Docket No. CL-2969

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

EDWARD F. CARTER, Referee

PARTIES TO DISPUTE:

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

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

(J. M. KURN AND FRANK A. THOMPSON, TRUSTEES)

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 Miss Pearl Broer, Interline Operator, office of the General Auditor at St. Louis, Missouri, for time lost account personal illness amounting to 8 hours each on March 6, and 7th, 1944.

(b) and that Carrier shall now be required to make this payment to Miss Broer.

EMPLOYEES STATEMENT OF FACTS: Miss Pearl Broer, seniority date Dec. 15, 1924, rate of pay \$6.92 per day, operates a Burrough Typing-Calculating machine preparing interline freight and ticket accounts. There was no qualified extra employe to work this position when Miss Broer was off due to illness on March 6th and 7th, and no overtime was worked on either day by others in the same Department.

POSITION OF EMPLOYEES: Sick Leave Rule No 94 read as follows:--

"When the work of an employe is kept up by other employes without cost to the carrier, a clerk who has been in continuous service of the carrier one year and less than two years, will not have deduction made from his pay for time absent on account of a bona fide case of sickness until he has been absent six working days in the calendar year; a clerk who has been in continuous service two years and less than three years, nine working days; a clerk who has been in continuous service three years or longer, twelve working days. Deductions will be made beyond the time allowance specified above.

The employing officer must be satisfied that the sickness is bona fide, and that no additional expense to the carrier is involved. Satisfactory evidence as to sickness in the form of a certificate from a reputable physician, preferably a company physician, will be required in case of doubt. The above limits of sick leave may be extended in individual meritorious cases and under the conditions specified, but only by agreement of the representatives of the carrier and of the employes."

It is the claim of the Brotherhood that inasmuch as Miss Broer's position was not filled on March 6th and 7th that she should be compensated for the time she was absent due to personal illness. We are told that there was some overtime worked by Interline Operators and Typists after Miss Broer had returned and worked three days—but none of it was worked before that time and we contend none of this overtime was due to the absence of Miss Broer.

covered by Mr. Hutchison's letter March 20, 1925, addressed to Heads of Departments (Exhibit A), Mr. Sullivan's circular letter March 23, 1925, addressed to Members System Board, Local Lodge Secretaries, and Local Chairmen (Exhibit B), and "Interpretation of Rule 94. Sick Leave", issued by Mr. Sullivan and attached to his letter March 20, 1925 (Exhibit C.)

Rule 94 clearly states an employe is entitled to pay or sick leave under certain conditions only. One of the conditions is "When the work of an employe is kept up by other employes without cost to the carrier", and that "the employing officer must be satisfied * * * that no additional expense to the carrier is involved".

In Mr. Sullivan's interpretation the first question and answer reads as follows:

"Question. What is the intent of the language 'Where the work of an employe is kept up by other employes without cost to the carrier'?

Answer. When the position occupied by the employe, absent on sick leave under pay, is not filled by an extra employe; or is not filled as provided in second note under Rule 24, and when the work of the absent employe is kept up by other employes without payment for overtime."

From the rules and interpretations it is clear that where the Company is put to any expense, either by filing the position of the absent employe or by the payment of any overtime, the employe is not entitled under the rule to payment for time off account sickness, and this is the way the rule has been applied for the more than twenty years it has been in effect.

This claim was first presented by Mr. S. R. Ross, General Office Chairman, in letter March 16, 1944, reading as follows:

"Miss Elsie Recks was absent March 7th to 11th and Miss Pearl Broer March 6th and 7th account of sickness.

The girls feel that after their many years service they should be allowed these few days as sick leave. It will be appreciated if you will allow them this time."

This letter does not request payment as a right under agreement rule but merely makes request that the time be allowed because the employes feel they should be allowed the time on account of their years of service.

Employes on the General Auditor's roster, including those in the statistical group, were not during or immediately prior to March, 1944, and are not now agreeable to working overtime without compensation, as may be necessary to keep up the work of employes absent account sickness and are, therefore, paid under agreement rules for any and all overtime they work, whether it is to keep up the work of employes account sickness and are, therefore, paid under agreement rules for any and all overtime they work, whether it is to keep up work of fellow employes absent account sickness or not. They work and are paid when employes are off account sickness just the same as when the full force is present and working.

As shown in the Statement of Facts, it was necessary to work overtime in the group where this clerk was employed. Had she not been off it would not have been necessary to work as much overtime as was worked; in fact, the amount of time she was absent resulted in just that much more overtime being necessary. The overtime was paid for under applicable rules at time and one-half rate. Therefore, it actually cost the Company 50% more to get the work that was not done account Miss Recks' absence done than it would have cost had she not been off.

It is our position this claim is entirely without foundation and should be declined in its entirety.

OPINION OF BOARD: The Claimant, Pearl Broer, is an Interline Operator in the office of the General Auditor at St Louis, Missouri. On March 6 and

7, 1944, she was off duty because of illness. Her position was not filled and no overtime was worked by other employees in the same department on those days. Her claim for compensation is based on a rule providing in substance that compensation will be allowed where the work of the employee is kept up by other employees without cost to the company. Rule 94, current Agreement.

The record shows that there was no pay roll increase on either of the days the Claimant laid off. Nor was there any overtime worked on March 8 and 9 following. It is the contention of the Carrier that several employees were obliged to work overtime on March 10, 11 and 13, and that part of this overtime worked was the result of Claimant being off duty on March 6 and 7.

The record shows Claimant's principal duty was the typing of abstracts of waybills covering freight shipments of foreign line origin received at system stations. These abstracts must be completed on or before the 14th of each month. It is the contention of the Claimant that the work which brought about the overtime worked by other employees on March 10, 11 and 13, 1944, came into the office after she had returned to work and, consequently, the overtime would have been necessary even if she had not laid off. In this latter respect, the record shows that 2690 and 2501 waybills were on hand in the office on March 6 and 7, respectively. On March 8, 9, 10 and 11, the numbers on hand were 5640, 8027, 8058 and 4179, respectively. We think this shows such a volume of increase in work that the overtime work performed on March 10, 11 and 13 would naturally result from it in view of the limited time in which it had to be performed. We are convinced from the record that Claimant's work was kept up on March 6 and 7 within the meaning of the Agreement. This conclusion is supported by Awards Nos. 1511, 1524, 2649. We are of the further opinion that Carrier's evidence showing payment of overtime on March 10, 11 and 13, under the circumstances here shown, is too speculative and remote to establish that Claimant's absence because of illness resulted in additional expense to the Carrier.

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 Employees involved in this dispute are respectively carrier and employees 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 evidence supports a finding that the Contract was violated.

AWARD

Claims (a) and (b) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary.

Dated at Chicago, Illinois, this 21st day of November, 1945.