

Award No. 3312

Docket No. CL-3294

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert G. Simmons, Referee

PARTIES TO DISPUTE:

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

BROOKLYN EASTERN DISTRICT TERMINAL

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

1. The Carrier violated the provisions of the Rules Agreement, and particularly Rules 31, 32, 36 and 48 when it deducted \$3.70 from the pay of Clerk, A. Dimino and deducted \$2.09 from the pay of Clerk, A. Bidovski, effective March 5, 1945, pay day for payroll period ending February 28, 1945, and
2. That the Carrier shall pay \$3.70 to Clerk, A. Dimino and \$2.09 to Clerk, A. Bidovski and that other employees having deductions in like manner be paid retroactive to February 28, 1945.

EMPLOYEES' STATEMENT OF FACTS: On July 14th, 1944, a claim was made in behalf of Clerk, James Carbone, for pay at the rate of \$51.52 per week, in accordance with Rule 32, for services performed on April 27th, 28th and 29th, 1944, while assigned to a position with established rate of \$51.52 per week. This claim was progressed to the Third Division--National Railroad Adjustment Board, Docket CL-2975. Before hearings were held by the Third Division the Carrier addressed a letter to Mr. Geo. M. Harrison, Grand President, dated February 12th, 1945, which reads in part as follows:

"This is to advise you that this claim, which in money amounts to \$3.70, will be paid to Clerk Carbone on payroll for period ending February 28, 1945, and to comply with the intent of Rule 36, that this same amount \$3.70 will be deducted from the pay of Clerk Dimino on the same payroll period."

Clerk, A. Dimino, was absent account of illness on April 27th, 28th, and 29th, 1944. He was paid for the three days absent his regular rate of \$51.52 per week on the payroll period ending April 30, 1944. When the Carrier agreed to comply with Rule 32, and pay Clerk, Carbone the difference between his rate of \$44.12 per week and the rate of \$51.12 per week for the three days assigned to the higher rated position it deducted the difference or \$3.70, from the pay of Clerk, Dimino. Clerk, A. Bidovski was absent account of illness on February 26th, 1945. His position was filled by an employee whose rate is \$6.50 per day. The relief employee was paid the rate of Clerk Bidovski's position of \$8.59 per day for February 26, 1945. Clerk Bidovski was paid the rate of \$6.50 for the day he was absent.

Rule 48 reads—

“Exceptions to any Rule or Rules in this Agreement may be made only by mutual agreement between the Management and the General Committee.”

No exceptions to the provisions of any rule or rules of the agreement are involved in this dispute. Therefore, Rule 48 has not been violated.

The carrier maintains—

- 1)—that deductions made from sick leave allowances to Cashier Dimino and Clerk Bidovski of the additional cost represented by the difference between their higher rates and the rates attaching to the positions of Assistant Cashier Carbone and Clerk Grimes in the circumstances here involved were entirely proper, and
- 2)—that these deductions preserved the understanding had at the time Rule 36 was incorporated in the agreement that payment for time lost on account of sickness would be continued under the then existing practice, namely, that payment would be made **ONLY IN INSTANCES WHERE THE WORK OF THE ABSENT EMPLOYEE IS KEPT UP BY OTHER EMPLOYEES WITHOUT COST TO THE CARRIER.**

The carrier further maintains that its position in this case is clearly supported by Third Division, N.R.A.B. Award No. 2422. The principle involved in the dispute covered by that Award and which exists in this case is identical. That principle is **THAT THERE SHALL BE NO ADDITIONAL COST TO THE CARRIER IN MAKING ALLOWANCES TO EMPLOYEES ABSENT ON ACCOUNT OF SICKNESS.**

OPINION OF BOARD: Clerk Dimino was absent from work on account of sickness for three days. His work was done by Clerk Carbone, whose rate of pay was less than Dimino's. Carbone was paid at Dimino's rate for the three days and the increase taken from Dimino's pay. The same situation involves the pay of Clerk Bidovski. Both clerks claim the rate of pay of their position while absent sick.

Rule 36 provides:

“Employees may be allowed a reasonable amount of time off account of sickness * * *, without loss of pay, subject to the judgment of the head of the department, and it is understood that existing customs and practices in the application of this rule will be continued.”

The Carrier takes the position that time lost on account of sickness has never been allowed when it would result in additional cost to the Carrier and that payment for time lost on account of sickness is only to be made in instances where the work of the absent employee was kept up by other employees without cost to the Carrier. Past practices of the Carrier before the adoption of the rule are asserted and denied.

Had the practice on the Carrier been as it states before Rule 36 was adopted, and had it been the intention to continue it, then it could well have been so stated, as is the rule in Award 2422:

“Where the work of any employee is kept up by other employees without cost to the company, the employee will be allowed compensation for time absent on account of bona fide sickness * * *.”

But Rule 36 does not so state. The rule above quoted from Award 2422 states “without cost to the company”. Rule 36 says employees may be allowed time off “without loss of pay”. That means without loss of pay to

the employe. Rule 36 says nothing about it being "without cost to the company" and nothing about other employes keeping up the work.

The Carrier states that, before Rule 36 was adopted, it was the custom and practice to give pay when absent sick only where the work was kept up by other employes without expense to the Carrier, and that such a practice is continued under the exact language of the rule. The difficulty is that the Carrier is arguing for a practice that nullifies Rule 36 in a large measure. Obviously the existing customs and practices which are continued under the rule are those which promote the functioning of the rule.

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 Employes involved in this dispute are respectively carrier and employes 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 Rule 36.

AWARD

Claim^w sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 22nd day of October, 1946