

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Ernest M. Tipton, Referee

PARTIES TO DISPUTE:

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

LEHIGH VALLEY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the Carrier violated the Clerks' Agreement:

1. When in April 1945, it issued instructions that requests for sick allowance should be accompanied by a Doctor's certificate of disability covering the period for which sick allowance is requested.
2. The Carrier violated the provisions of Rules 56 (b), 78 and 82, when it issued such instructions without conference or notice to the Committee.
3. The Carrier shall be required to apply the provisions of Rule 56 (b) as the rule was applied prior to April 1, 1945.
4. The Carrier shall be required to compensate Mr. A. R. Prestage, Clerk, Pier 38, New York City, for wage loss suffered May 10, 1945, account of personal illness and the arbitrary cancellation of Rule 56 (b).

EMPLOYEES' STATEMENT OF FACTS: "A revised working agreement was effected March 1, 1939 between the Carrier and the Brotherhood of Railway Clerks; Rule 56 (b) reading:

"Sick Leave. (b) A limited amount of sick leave without loss of pay may be granted monthly rated employes, subject to approval of the officer in charge of seniority district. Time absent account of sickness or other cause will not be charged to vacation allowances."

Effective June 1, 1940, President Williams issued the following instructions:

**LEHIGH VALLEY RAILROAD COMPANY
GENERAL ORDER NO. 4**

"New York, May 23, 1940.

ALL CONCERNED:

Effective June 1st, 1940 payment for time lost on account of sickness or other cause will be made upon authority of the President.

A separate request for authority should be made on Form 37-A for each employe. All information called for by the form must be shown.

There have been varying instructions in effect over a period of years with respect to the requirement of employes furnishing a doctor's certificate when requesting pay for sick allowance. Such a requirement is regulatory to avoid abuse of the rule and to permit the officer in charge of the seniority district to fairly and properly consider each claim for payment. To clarify the instructions then in effect, during April 1945 the Carrier notified its supervisory officers it would be required in the future, in submitting sick allowance claims for clerks, that same would have to be accompanied by doctor's certificate. In this particular claim, the employe did not comply with the instructions in effect, in that no doctor's certificate was furnished, and the request for payment for time claimed lost was declined.

POSITION OF CARRIER: In this case, the Carrier maintains that in order fairly and equitably to allow pay on sick claims, it must have some reputable supporting evidence on which to decide whether the claim is bona fide under the rule. We feel there can be no reasonable objection on the part of employes in furnishing a doctor's certificate in support of their sick claim, and this has been done in hundreds of cases prior to and since April 1945, and in all such cases payment has been allowed in accordance with this rule.

It was explained to the Committee, in discussing this claim on the property at various times since April 1945 that the instructions requiring the furnishing of a doctor's certificate did not change their rule or violate any rule of their agreement, but, instead, established a means which would permit fair and impartial consideration of claims and would place no undue hardship on the employes. We feel the matter of sick claim allowances is one that must be subject to some regulatory measures, and it is the duty of the Management, as well as the duty of the Employes, to effect the necessary regulations to avoid abuse of the rule.

We maintain the instructions which were issued as complained of in this case were not arbitrary on the part of Carrier to avoid the payment of sick claims, but, rather, set up a procedure to permit proper consideration of the claims on an equitable basis.

In the claim of Employes, they cite Rules 78 and 82 as having been violated. There was no violation of these rules in the instant case, as no change or interpretation of the Clerks, rules was involved in the instructions requiring a doctor's certificate being furnished with claims made under Rule 56 (b), and these instructions were issued only as a means to properly administer the provision of that rule.

The employe in this claim failed to comply with the instructions in effect in not furnishing a doctor's certificate with the sick claim and, therefore, the claim could not be allowed.

In the light of the foregoing facts and circumstances set forth in this submission, it is the contention of the Carrier that the claim of the Employes should be denied.

OPINION OF BOARD: The Claimant, A. R. Prestage, a Clerk, at Pier 38, New York City, was absent from duty on May 10, 1945, on account of sickness. The record discloses that the Carrier does not dispute that he was sick, but denied his claim for pay on that date solely on the ground that the Carrier was not furnished a doctors certificate as required by instructions issued by the Carrier on April 10, 1945. Among other things, these instructions required that request for sick allowances must be accompanied by a doctor's certificate.

The Petitioner contends that the action of the Carrier in denying this claim because not accompanied by a doctor's certificate violates Rule 56 (b) of the current agreement. That rule reads:

"A limited amount of sick leave without loss of pay may be granted monthly rated employes, subject to approval of the officer in charge of seniority district. Time absent account of sickness or other good cause will not be charged to vacation allowances."

There is nothing in this rule that requires a doctor's certificate before a claim for sick allowance will be sustained. In this case the Claimant was only absent from work one day and no doctor was needed. Under the rule an employee is entitled to a limited amount of sick leave without loss of pay whether he has a doctor or not.

This rule was interpreted by this Division in Award No. 2483. In that Award, we said:

"The letters and statements written by the managing officers of the Carrier relative to the administration of the sick leave rule are, of course, unilateral in character and do not have the effect of modifying the agreement. There has been, therefore, no effective cancellation of Rule 56 (b) and the liability imposed by it."

So, this Board thinks that the instructions of the Carrier dated April 10, 1945 which requires a doctor's certificate is unilateral and does not effect or modify Rule 56 (b).

As previously stated, the Carrier did not deny this claim on the theory that the Claimant was not sick on the date in question, but denied the claim solely on the theory that he failed to furnish a doctors' certificate as required by its instructions of April 10, 1945. The claim must be decided by this Board on the same theory.

From what we have said it follows that the Claimant is entitled to be paid for May 10, 1945 and that it is unnecessary for us to decide if the exchange of letters dated March 16, 1945 and March 19, 1945 between the Assistant to General Manager Haines and General Chairman Buckley constituted a Memoranda of Agreement or understanding as to the proper application of Rule 56 (b).

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 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 violated the current agreement as contended by the Petitioner.

AWARD

Claim (1, 2, 3, and 4) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 22nd day of November, 1946.