Award No. 3351
Docket No. CL-3342

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 it failed and refused to compensate employes for time lost account of death in family—as provided in Rule 56 (b) of current agreement and Memorandum Agreement effective March 16, 1945.

2. When it arbitrarily charged three (3) days' loss of time against vacation assignment of Mr. James J. Conlon, Foreman, Warren Street, Jersey City, N. J.

3. That the Carrier shall be required to apply the provisions of Rule 56 (b) of the current agreement and Memorandum Agreement effective March 16, 1945, as applied prior to April 1, 1945.

4. That Carrier be required to compensate employe Mr. James J. Conlon, Foreman, Warren St., Jersey City, N. J., for time lost July 21st, 22nd and 23,. 1945, account of the death of his father; due to the Carrier's arbitrary action.

EMPLOYES' STATEMENT OF FACTS: A revised working agreement between the parties, was effected March 1, 1939, Rule 56 (b) reading:

> "**SICK LEAVE—RULE 56 (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 good cause will not be charged to vacation allowances." (Underscoring ours.)

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, payments for time lost on account of sickness or other good causes will be made only upon authority of the President.

felt the settlement of the old claims established the basis for future payments under this rule, and called attention to the fact that the settlement agreed to in the old claims did not establish a precedent for the settlement of future claims, and asked the General Chairman, if he had issued instructions to the Clerks contrary to the understanding had, that his instructions be corrected. This matter was further discussed with the General Chairman at conference on April 3, 1945, and on April 14, 1945 he acknowledged Carrier's letter of March 31, 1945. We maintain this exchange of letters definitely confirms our statement that the letter of Carrier of March 16, 1945, was not construed by either party as a memorandum of agreement for any claims beyond those presented at that time. Copy of Carrier's letter of March 31, 1945, and of General Chairman's letter of April 14, 1945, are submitted.

Rule 56 (b) is very definitely a sick leave rule and makes no provisions for payment for time lost for any other reason. There is no question of what the intent of the parties was when this rule was negotiated, and if it had been intended that claims for time lost in cases other than sickness were to be considered for payment, such a provision would have been written into this rule.

The Carrier did not arbitrarily charge the time claimed in this case against the vacation assignment of the claimant, but did so at the specific request of the claimant, who desired this action taken to avoid loss of earnings. The Carrier maintains it complied with the provisions of Rule 56 (b) of the current agreement in this case, and did not violate the provisions of that rule in granting the request of the claimant for the vacation period involved.

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 issues in this claim are identical with Award No. 3347, Docket No. CL-3337, and for the reasons stated in that Award the claim is denied.

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 not violated the Agreement as contended.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 6th day of December, 1946.