

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 apply the established working conditions and practice of affording unlimited sick pay allowance to clerical employees of the Auditor of Revenues Office, Philadelphia, Pennsylvania, in effect prior to April 1st, 1945.
2. When it arbitrarily cancelled the established working conditions and practice provisions of Rules 56 (b), 78 and 82, without conference or notice to the employees.
3. When it arbitrarily charged one (1) day's loss of time (May 31, 1945) account of personal illness, against vacation assignment of Miss Mabel A. Thompson, Clerk in Auditor of Revenues Office, Philadelphia, Pennsylvania.
4. When it arbitrarily deducted two (2) days loss of time (June 1 and 2, 1945) account of personal illness, from the wages of Miss Mabel A. Thompson, Philadelphia, Pennsylvania.
5. The Carrier shall be required to restore said established working condition and practice—apply the provisions of Rule 56 (b) to employees of the Auditor of Revenues Office as the rule was applied prior to April 1, 1945.
6. The Carrier shall be required to restore one (1) day's allowance to vacation assignment of Miss Mabel A. Thompson, Philadelphia, Pennsylvania.
7. The Carrier shall be required to compensate Miss Mabel A. Thompson, Clerk in Auditor of Revenues Office, Philadelphia, Pennsylvania, two (2) days' wage loss suffered June 1 and 2, 1945, arising out of the arbitrary cancellation of such working conditions and practice as provided in Rule 56 (b) of current agreement.

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

"SICK LEAVE: A limited amount of sick leave without loss of pay may be granted monthly rated employees, 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)

as the record clearly shows an allowance of fifteen days' pay for time lost on account of illness was made her, which was a reasonable allowance, as provided for under Rule 56 (b).

The action taken by Carrier was not arbitrary, but, instead, was handled strictly in accordance with the rules of the controlling agreement, and the allowance paid this employe for time lost account personal illness was reasonable and just.

In the claim of Employes they cite Rules 78 and 82 as having been violated. There was no violation of these rules in this case, as no change or interpretation of the Clerks' Rules was 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 Claimant, a Clerk in Auditor of Revenues Office, at Philadelphia, Pennsylvania, was off duty from May 13, 1945 to June 3, 1945, on account of being sick. Claim was presented for pay for time lost and a doctor's certificate was furnished certifying to her illness.

The Carrier allowed her fifteen days and at Claimant's request she was allowed one additional day (May 31, 1945) which was to be applied against her vacation allowance still due.

Petitioner contends that since her duties were absorbed by other employes at no additional expense to the Carrier she should have been paid for the total period of her absence, or eighteen days, and the charge of one day to vacation was a violation of the current agreement.

The rule involved in this dispute is Rule 56 (b), which 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 causes will not be charged to vacation allowances."

There can be no doubt that in charging May 31, 1945 (one of the days she was sick) to her vacation allowance was a violation of Rule 56 (b). The fact that the Claimant requested that this day be charged to her vacation allowance would not alter the situation. Where collective bargaining agreements exist their terms cannot be superseded or varied by special voluntary individual contracts. See Award No. 2602.

Petitioner contends that in this particular office of Auditor of Revenues there had been established by practice allowance of pay for all time lost on account of sickness because no additional expense was involved on account of other employes absorbing and performing the work of the absent employes.

Rule 56 (b) was interpreted by this Division in Award No. 2483. In ruling the same contention in that Award we said:

"There are indications in the record that sick leave without loss of pay is to be allowed by the Carrier only when it involves no additional expense to the carrier. The rule makes no such exception and it is not a valid defense to a claim under the rule."

"As we have said, the quoted rule imposes a positive liability upon the carrier. In fulfilling its obligation under that rule, the carrier has allowed sick leave without loss of pay for periods as great as thirty days annually. This cannot be said to constitute a practice which the employes can properly demand to be enforced as such. While in a proper case, the past conduct of the carrier in making sick leave allowances may be some evidence as to what was meant by the words 'limited amount' as they were used in the rule, still the allowances made by the carrier resulted from a contractual

liability and not because of the existence of any practice as it is understood in the railroad industry. Allowances made as the result of a contractual liability cannot constitute the basis for the establishment of a practice."

Upon authority of Award No. 2483, we hold that an employe absent on account of sickness is entitled to a "limited amount of sick leave without loss of pay" whether his work was absorbed by other employes and there was no additional expense to the Carrier or whether his work was not absorbed and there was additional expense to the Carrier on account of the absence of the sick employe.

The phrase "a limited amount of sick leave without loss of pay" means that the carrier must use an honest discretion in making the allowance, depending upon the facts and circumstances in the particular case involved. See Award No. 2483.

On the record in this claim, we cannot say that the Carrier did not use its honest discretion.

From what we have said it follows that the Carrier violated the current agreement when it applied May 31, 1945 to Claimant's vacation allowance and she should be paid for that day, and the claim for pay for the other two days should be 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 Agreement was violated when the Carrier deducted one day from Claimant's vacation allowance. In other respects there was no violation of the Agreement.

AWARD

Claim sustained in part in conformity with this Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

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

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

INTERPRETATION NO. 1 TO AWARD NO. 3353
DOCKET NO. CL-3346

NAME OF ORGANIZATION: Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees.

NAME OF CARRIER: Leigh Valley Railroad Company.

Upon application of the representative of the employe involved in the above award, that this Division interpret the same in the light of the dispute between the parties as to its meaning and application, as provided for in Section 3, First (m), of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

The Findings were "That the Agreement was violated when the Carrier deducted one day from Claimant's vacation allowance. In other respects there was no violation of the Agreement." The Award sustained the claim "in conformity with this Opinion." The Opinion said, "From what we have said it follows that the Carrier violated the current Agreement when it applied May 31, 1945 to Claimant's vacation allowance and she should be paid for that day, and the claim for pay for the other two days should be denied." The Claim before the Board was for pay for three additional days on account of sickness, in addition to the fifteen day sick leave granted Claimant by the Carrier.

The Opinion plainly states that the Claimant is entitled to pay for May 31, 1945, but not for June 1st and 2nd.

We therefore hold that the Award is that she shall be paid for May 31, 1945.

Referee Ernest M. Tipton, who sat with the Division as a member when Award 3353 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 11th day of June, 1947.

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