

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

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

THE WESTERN PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway Clerks, that

Van O. Davison, Assistant Accountant, Superintendent's Office, Sacramento, be allowed one day's pay for March 16, 1945 under Rule 52 account handling necessary personal business incident to answering Selective Service call.

EMPLOYEES' STATEMENT OF FACTS: Van O. Davison, seniority date April 5, 1937 is employed as Assistant Accountant in Superintendent's Office, at Sacramento.

During the month of March 1945 it became apparent that Davison would shortly be inducted into military service. Incident to his induction, it became necessary for Davison to make a Court appearance for the purpose of substantiating his record of birth. The Court set the hearing for March 16, 1945.

The matter of necessity for Davison's absence on this date has not been questioned by the Carrier.

At the time this dispute arose Davison was married and the father of one child.

Davison's absence on March 16, 1945 was charged against his vacation.

POSITION OF EMPLOYEES: The employees cite the following rule from agreement bearing effective date of December 16, 1943.

Rule 52. Employees will be allowed compensation for time lost account of personal illness, or for other good and sufficient reason subject to the approval of the supervising officer, provided the work is kept up without additional expense to the Railroad, on the following basis:

(a) Employees in service less than one year, no allowance.

(b) Employees in service one year and less than 2 years, one calendar week (6 working days), non-penalizing.

(c) Employees in service 2 years or more, 2 calendar weeks (12 working days), each year, non-penalizing.

time limits specified in Rule 52, that portion of the rule reading "subject to the approval of the supervising officer" is not a mandatory provision. In Award No. 3268 you have recognized that either the Carrier or the Organization can decline such a request without giving any reason at all. The Agreement certainly does not give the Brotherhood the right to tell Carrier's Supervising Officer what he should do under such circumstances.

The caption "Sick Leave" of Rule 52 in itself confines the provisions of that rule to sickness and other good and sufficient reasons allied with sickness. Even if the Carrier had surrendered its discretionary powers, the case here at issue would not have come within the provisions of the rule because it does not embrace, either directly or indirectly, any necessity for absence because of sickness. The absence on March 16, 1945, was solely due to the personal affairs of Davison.

SUMMARY: The Carrier contends that the claim should be denied for the following reasons:

- (1) Davison's absence from his position on March 16, 1945, was not for any reason coming within the provisions of Rule 52.
- (2) The approval of the supervising officer, as contemplated in the first paragraph of Rule 52, recognizes the Carrier's discretionary authority and was not a mandatory provision.
- (3) The opinion of Board in Award No. 3268 sustains the Carrier's position.

OPINION OF BOARD: The material facts in this case are not in dispute. Briefly, they are as follows: On March 16, 1945, Van O. Davison, Assistant Accountant, Superintendent's Office, Sacramento, was absent from duty in order to make a court appearance on a hearing set by the court for March 16, 1945 for the purpose of substantiating his record of birth. The absence was charged to his vacation leave. Claim is made by the petitioner that Davison should have been compensated for the absence under the provisions of Rule 52 (captioned Sick Leave) of the Agreement between Carrier and the Clerks, effective December 16, 1943.

The pertinent part of Rule 52 reads:

"Employees will be allowed compensation for time lost account of personal illness, or for other good and sufficient reason subject to the approval of the supervising officer, provided the work is kept up without additional expense to the Railroad, on the following basis: . . ."

While the paragraph containing Rule 52 of the Agreement is captioned "Sick Leave," the Employee representative argues with considerable persuasiveness and logic that the provisions of the rule cover situations where absences are occasioned for reasons other than illness or of an emergency nature connected with illness or death, and that this absence having been caused for "other good and sufficient reason" the action of the supervising officer in withholding approval was capricious and arbitrary and therefore the employee should be compensated for that day. Employee representative cites Award No. 195 in support of this contention.

Carrier maintains the position that the caption of the rule confines the provisions of the rule to absences caused by sickness and other good and sufficient reasons allied with sickness, but notwithstanding, in any event absences for "other good and sufficient reasons" are subject to the approval of the supervising officer and such approval may be withheld (as it was in this case) by the Carrier at its own election, and cites Award 3268 in support of this latter contention.

Numerous other awards have been cited by both sides and although pertinent with respect to general principle, do not have the relevancy to this case as do the two mentioned above.

We agree with the contention of the Employee representative with respect to the proposition that Rule 52 covers situations where absences are caused by reasons other than illness or occasions of an emergency connected with illness or death. The wording of the rule clearly indicates an intention to allow compensation for time lost for "other good and sufficient reasons," subject, however, to the approval of the supervising officer. It is to be noted that the entire phrase—or for other good and sufficient reasons subject to the approval of the supervising officer—is set off by commas, indicating the intention to create two reasons for allowance of compensation for lost time under the provisions of the rule—1, account of personal illness, 2, for other good and sufficient reason subject to the approval of the supervising officer, and both conditioned upon the fact that the work can be kept up without additional expense to the railroad. There is no question that in this instance the work was kept up without additional expense to the railroad.

Thus for the ultimate disposition in this case is squarely presented the determination of the question as to what is required of the Carrier in withholding approval of compensation for time lost for "other good and sufficient reasons" (other than account of personal illness).

The Employee representative argues that employees seeking compensation for time lost either because of sickness or for "other good and sufficient reason" have the same standing under Rule 52 and that he does not believe that it was intended to grant the "supervising officer" arbitrary power to approve or disapprove sick leave payment to employees, and that if that arbitrary power is not granted under the rule in cases of personal illness (citing Award 195) it likewise is not granted to the supervising officer when employees lose time for "other good and sufficient reason."

In Award No. 195 the rule therein interpreted read "Pay will be allowed on account of absence due to bona fide illness at the discretion of the Head of the Department when the length and character of the service and other facts surrounding the individual case warrant." The referee in that case, citing an extract from a decision of the Supreme Court of the United States, said:

"The term discretion, as used in the rule in question, negatives the idea that the carrier may do as it pleases about sick claims. The exercise of discretion positively requires the head of a department to weigh the character of service and other facts surrounding an individual case before denying a claim."

We have no quarrel with the referee's holding in that case. However, here the language of the Agreement differs and instead of the term "at the discretion of," the language is "subject to the approval of," and makes no mention of any factors governing the granting or withholding of the approval. We believe that this wording places a less affirmative obligation on the carrier with respect to withholding compensation for time lost for "other good and sufficient reasons" than would the wording of the rule under consideration in Award No. 195.

In this instance we do not believe that we would be justified in substituting our judgment for the Carrier's judgment with respect to what would be "other good and sufficient reasons" under this rule. We recognize that another supervisor or another carrier in similar circumstances may have allowed compensation for time lost by an employee under the circumstances here present. But, that cannot influence our decision in interpreting the rule. Accordingly, we hold that the claim must be denied.

We don't wish to imply or have it inferred that we consider that the same reasoning would apply to time lost account of personal illness, for we are by no means convinced that the words "subject to the approval of the supervising officer" modifies the affirmative statement that employees will be allowed compensation for time lost account of personal illness.

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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 12th day of October, 1948.