Award No. 4818
Docket No. CL-4867

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Curtis G. Shake, Referee

PARTIES TO DISPUTE:

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

THE CHESAPEAKE AND OHIO RAILWAY COMPANY

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

(a) The Carrier has violated and continues to violate Rule 60 and Memorandum Agreement No. 4, supplementary to General Agreement No. 7 by discontinuing, failing and/or refusing to properly apply the terms of the Agreement to employes absent account of illness, and

(b) That the following employes located at Chicago, Illinois, from whose wages deductions were made during the year 1947 shall be reimbursed at their regular rates of pay for the number of days indicated after the name of each:

Thomas McBride	11 days	Thomas Crowley	9 days
T. P. Burke	9 days	H. A. Kosmos	9 days
Frank Burgess	2 days	J. P. Riordan	3 days
Thomas Conway	5 days	E. J. Urban	9 days, and

(c) That any and all employes who have been or shall hereafter be improperly paid account of failure of the Carrier to allow them credit for all service as contemplated by the Agreement shall be reimbursed for any and all such loss sustained.

EMPLOYES' STATEMENT OF FACTS: During the year 1944, the then existing Clerical Agreement known as No. 6 was revised, a new agreement being signed November 21, 1944, to be and which did become effective January 1, 1945, containing Rule 60—Absent Account of Personal Illness with Pay, reading:

"The policy of the Management is to be liberal in the matter of allowing pay for Group 1 employes, telephone switchboard operators, crew callers, messengers, and file assorters absent account personal illness, except where undue advantage is taken of this policy."

Also Interpretation of Rule 60 as follows:

"MEMORANDUM AGREEMENT NO. 4

Supplementary to General Agreement
No. 7

Covering Interpretation of Rule 60 of
Clerks' Agreement No. 7

On March 11, 1945, some three weeks after the conference of February 15, referred to, Mr. C. A. Taylor, General Superintendent, requested similar information in connection with claim of C. V. Greenslate, copy of which letter is attached as Carrier's Exhibit "C".

Mr. Seaton replied on March 24, 1945, over Mr. Clark's signature, which reads in part as follows:

> "In other words Memorandum Agreement No. 4 applies only to Group 1 employes, telephone switchboard operators, crew callers, messengers, and file assorters, and only service in these classifications should be counted in computing the service under Sections (a) and (b) of the Memorandum Agreement."

In other words, Mr. Seaton, both prior to and after the conference of February 15, 1945, issued positive instructions setting forth the understood interpretation of the word "service" as it was to be construed in computing time under Sections (a) and (b). This would certainly indicate a misunderstanding on the part of the General Chairman as it is not reasonable to suppose that Mr. Seaton would agree to one interpretation and advise the officers of the company that a contrary interpretation was the proper one.

Now, to show that the Committee was well aware of the fact that our understanding of the word "service" has always been as hereinbefore set out, a similar claim was appealed to this office October 31, 1945, by the General Chairman, in behalf of Tabulating Machine Operator Frank Porter for compensation for March 27, May 10, 11 and 12, 1945 account of sickness. The claimant attempted to combine Group III service with his Group I service in computing benefits under the rule. The claim was declined November 14, 1945, and has never been appealed further. A copy of Mr. J. B. Parrish's letter of November 14, 1945, is attached as Carrier's Exhibit "D". That letter reads in pertinent part as follows:

> "It is our understanding that Rule 60 and Memorandum Agreement No. 4 apply only to Group 1 employes, telephone switchboard operators, crew callers, messengers and file assorters and only service in these classifications is to be counted in computing service referred to under Section (a) and (b) of Memorandum Agreement No. 4.
>
> "This claim is therefore declined."

Another similar claim was appealed to this office by Acting General Chairman Cart on November 15, 1945, in favor of Mrs. Mae Whitney. That claim was also declined for the same reason and no further appeal was made from that decision. A copy of Mr. J. B. Parrish's letter declining the claim is attached as Carriers Exhibit "E".

From the above it can be readily seen that it was never the understanding or intention that service in Group II (other than those named in the Memorandum Agreement) or Group III should be counted in computing service under Sections (a) and (b). **The rule itself specifically confines its application to Group I employes, telephone switchboard operators, crew callers, messengers and file assorters.**

(Exhibits not reproduced.)

OPINION OF BOARD: Rule 1 of the effective Agreement enumerates three groups of employes as being within the scope of its coverage. Rule 60 provides that employes in Group 1 and telephone switchboard operators, crew callers, messengers, and file assorters (who are in Group 2), shall, in proper cases, be paid when absent from work on account of personal illness. None of the other employes in Group 2 and none of those in Group 3 are covered by Rule 60. The formula for applying Rule 60 is set forth in Memorandum Agreement No. 4. It provides that covered employes with from one to ten "years' service" may be entitled to sick leave with pay ranging from fifteen days to six months, respectively, during the calendar year.

The sole question before us is as to the proper meaning and application of the words "years' service", as used in Memorandum Agreement No. 4. To illus-

trate: May service in Group 3 be combined with continuous service in Group 1 in determining eligibility for sick leave payments and in computing the amount thereof to which an employe may be entitled?

In approaching the problem of resolving the controversy before us, several significant facts may be deduced from the record. First, the words "years' service", appearing in the Memorandum Agreement, do not appear to have been carelessly or inadvertently employed. These identcal words were used in precisely the same form and context no less than eight times in the Memorandum. Moreover, the parties appear to be in agreement on the proposition that the meaning of the term "service', as used in the Memorandum and as applied to the specific issue that now confronts us, was in the minds of the parties and was fully considered by them when the Memorandum was negotiated, though they disagree as to what the understanding was in that regard. Finally, it appears that the Carrier applied the Memorandum to its Chicago employes, in the first instance, as the Organizaton says it should be applied, though subsequently the Carrier recouped its expenditures by means of payroll deductions.

Where, as here, the contracting parties execute an agreement with full notice and appreciation of the fact that they entertain divergent views as to the meaning and proper application of the language that they finally join in formally adopting, there is nothing that this Board can do but ascribe to the language used its commonly accepted meaning. To do otherwise would place us in the position of making an agreement for the parties.

Use of the words "years' service", in an agreement of the character of that presently before us would ordinarily be understood, we think, as embracing the aggregate period of continuous employment under the applicable agreement or agreements, rather than the narrower meaning for which the Carrier here contends.

FINDINGS: The Third Division of the Adjustment Board, after giving the 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 violated the Agreement as claimed by the Organization.

AWARD

Claim (a, b and c) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 29th day of March, 1950.