Award No. 5469
Docket No. CL-5521

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee.

PARTIES TO DISPUTE:

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

NORTHERN PACIFIC RAILWAY COMPANY

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

(1) That the Carrier violated the Clerks' Agreement when it refused to pay Mrs. Mary M. Wenaas for time which should have been allowed as sick leave and charged the time instead against her vacation allowance, and

(2) That Carrier be required to compensate Mrs. Mary M. Wenaas for eight hours on March 4 and 17, four hours on July 1 and September 10 and eight hours on December 11, 1947.

EMPLOYES' STATEMENT OF FACTS: Mrs. Mary M. Wenaas is a regularly assigned timekeeper in the Office of District Accountant at Livingston, Montana, with a Class "A" seniority date of July 23, 1923. Her rate of pay is $10.26 per day.

In August of 1946 Mrs. Wenaas requested and was granted a leave of absence so that she might go to California for a period of three weeks because of her health. This time was not considered as a regular leave of absence but was applied against her vacation and sick leave allowance to permit her absence until September 7, 1946.

Before the time expired for her return, Mrs. Wenaas addressed a letter to the District Accountant, requesting a ninety-day leave of absence with permission to accept outside employment. On November 7, 1946 she addressed a letter to Division Chairman W. F. Dodge, in which she also requested a ninety-day leave of absence with permission to work in outside employment. On November 12, 1946, Mr. Dodge addressed a letter to Mrs. Wenaas in California, a copy of which was furnished the District Accountant at Livingston, Montana, informing her that her request had been granted.

Mrs. Wenaas was on a leave of absence from September 8 to December 26, 1946, returning to the employ of the Northern Pacific Railway Company on December 27, 1946.

On March 4 and 17, July 1, September 10 and 11, 1947, Mrs. Wenaas was absent from work because of illness. Although her work was kept up by other clerks in the office, the District Accountant, instead of charging

OPINION OF BOARD: Claimant is a regularly assigned Timekeeper in the District Accountant's office at Livingston, Montana. In August. 1946, Claimant requested and was granted a leave of absence for three weeks, which was applied against her vacation and sick leave allowance. Before her return Claimant requested a ninety day leave of absence, with permission to engage in outside employment. She returned to her employment with the Carrier on December 26, 1946. On March 7 and 17, September 10 and December 11, 1947, Claimant was absent from work because of illness. Carrier contends that Claimant was not entitled to sick leave in 1947 under the controlling rules, and charged the time to her vacation allowance. Claimant contends that it should have been charged to her sick leave, and her work having been kept up by other employes, she should not have suffered any loss of time therefor. Claimant contends she should be compensated for the four days deducted from her vacation allowance.

The applicable portion of the controlling rule provides:

> "Where the work of the employe is kept up by the other employes without cost to the Railway Company, a clerk paid on a monthly or daily basis, who has been in the continuous service of the Railway Company one year, will not have deduction made from his pay for time absent on account of a bona fide case of sickness until he has been absent six working days in the calendar year; * * *." Rule 67—Current Agreement.

The Carrier contends that the leave of absence granted in 1946 with permission to engage in other employment, breaks the continuous service of the Claimant and defeats her claim to sick leave in 1947. This very point has been determined adversely to the claim of the Carrier in Award 5201. In that Award we said: "We think it is sufficient if a clerk has performed continuous service within the requirements of Rule 66 at any time during his employment by the Carrier as long as he retains an employment status with the Carrier subsequent thereto which is continuous up to the date of claim." The present claim is within the foregoing interpretation, and it should be sustained.

Carrier asserts that Claimant's work was not kept up without expense to the Railway Company in accordance with the provisions of Rule 67. This question was not raised on the property, and cannot be raised before this Board for the first time. Parties to disputes before this Board will not be permitted to mend their holds after they reach he Board on appeal, and thereby create variances in the issues from what they were on the property.

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 Employe involved in this dispute are respectively Carrier and Employe 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.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 21st day of September, 1951.