

Award No. 5733
Docket No. CL-5797

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Livingston Smith, Referee

PARTIES TO DISPUTE:

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

KANSAS CITY TERMINAL RAILWAY COMPANY

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

(a) The Carrier violated and continues to violate the Agreement between the parties when, effective with the payroll period for the first half of January, 1950, the Carrier discontinued the payment of sick leave to Ticket Sellers and Information Clerks, Union Station Ticket Office, required by Sick Leave Rule 51, and;

(b) The Carrier shall be required to pay claims filed in behalf of the following employees for the dates shown because of such violation:

H. E. White,	Information Clerk, February 1, 1950
H. O. Kuhne,	Ticket Seller, February 6, 7, 8, 9, and 10, 1950
F. J. Hughes,	Relief Ticket Seller, February 10, 1950
R. L. Gerard,	Ticket Seller, February 12, 1950
C. L. Neely	Relief Ticket Seller, January 13, 1950
F. B. McCall,	Information Clerk, February 23 and 24, 1950
H. E. White,	Information Clerk, January 31, 1950
H. A. Jagodnigg,	Ticket Seller, February 23, 1950

and;

(c) The Carrier shall be required to pay to all Ticket Sellers and Information Clerks, including those listed in paragraph (b), for violations of Rule 51 occurring subsequent to the dates given in paragraph (b).

EMPLOYEES' STATEMENT OF FACT: There is an agreement in effect between the parties bearing effective date of October 1, 1942, which contains the following Rule:

"Rule 51

SICK LEAVE

"Where the work of an employe is kept up by other employes without cost to the carrier, a clerk who has been in continuous service

TELEGRAPH

Seniority Class One—Telephone Switchboard Operators.
Seniority Class Two—Messengers.

TICKET

Seniority Class One—Ticket Sellers, Clerical Workers, Kansas City, Kansas, Kansas Seventh Street Station, Central Avenue Station and Uptown Ticket Office.

TICKET OFFICE

Seniority Class One—Ticket Sellers, Clerical Workers.
Seniority Class Two—Baggage-men, Janitors.

YARD

Seniority Class One—Clerical Workers."

* * * * *

Rule 51 requires the Carrier to pay for time off for specified periods after certain defined years of service, to clerks. The Scope Rule spells out who clerks are in each department, clerical workers. Ticket Sellers are separated from the clerical workers under the Ticket Department and Information Clerks are listed under the Passenger Department separately Clerical Workers, Information Clerks.

After negotiations preceding the 40-Hour Week Agreement it became apparent that the Carrier had been misapplying the Sick Leave Rule in the cases of Ticket Sellers and Information Men. The fact that the rule had been misapplied for years does not estop the Carrier from rectifying the error and making proper application of the principles of the rule. Carriers are penalized for violation of rules and required to change operations to comply with the literal provisions of such violated rules, therefore, conversely if the carrier is extending coverage beyond the requirements of the rule, the practice should be stopped as soon as the misapplication is discovered.

Ticket Sellers and Information Men are listed separately from the Clerical Workers in the Scope Rule of the Parent Agreement and in every other agreement. A classic example is found in the National Vacation Agreement, Article 2, (a) 1 which says in part, "Clerks, (clerical workers and machine operators) which classification for the purposes of this agreement shall be construed to also include the occupations hereafter named— * * * ticket sellers * * *." They were not clerks, but for the purposes of the vacation agreement should be construed to include this occupation also.

Past practice without a rule has been construed as having the effect of making a rule, but past practice does not enlarge on a rule that has been reduced to writing. See Awards of the Third Division Nos. 5278, 4513, 3979, 3890, 3603, 2926, 2812, 1671, 1518, 1492, 1456 and 422.

All of the above has been handled with the Organization either in conference or in writing.

(Exhibits not reproduced).

OPINION OF BOARD: It is here averred that Respondent is in violation of the effective Agreement by virtue of a refusal to continuously apply Rule 51, pertaining to sick leave to employes classified as Ticket Sellers and Information Clerks.

The Carrier (page 22 of the docket) notified the Organization that the employees performing the functions of Ticket Sellers and Information Clerks were not subject to coverage of Rule 51, inasmuch as said Rule covered clerical workers only.

Rule 51 provides:

"SICK LEAVE

"Where the work of an employe is kept up by other employes without cost to the carrier, a clerk who has been in continuous service of the carrier one year and less than two years, will not have reduction made from his pay for time absent account of a bona-fide case of sickness until he has been absent five (5) working days in the calendar year; a clerk who has been in the continuous service two years and less than three years, seven and one-half (7½) working days; a clerk who has been in continuous service three years or longer, ten (10) working days. Deductions will be made beyond the time allowance specified above.

"The employing officer must be satisfied that the sickness is bona-fide, and that no additional expense to the carrier is involved. Satisfactory evidence as to sickness in the form of a certificate from a reputable physician, preferably a company physician, will be required in case of doubt.

"The above limits of sick leave may be extended in individual meritorious cases."

It is asserted by the Carrier that the historical definition of clerks as applied by the parties is as follows:

"Definition of Clerical Workers, etc., sets out who shall be considered clerical workers, i.e., 'Employees who regularly devote not less than four hours per day to the writing and calculating incident to keeping records and accounts, rendition of bills, reports and statements, handling of correspondence and similar work.'"

It is asserted that the Scope Rule in specifically naming Information Clerks and Ticket Sellers placed occupants of the position outside the classification of clerks as such, and that clerical work to the extent of the definition above shown is not performed by employees so classified.

Both the job titles of Information Clerk and Ticket Sellers are named in Rule 1. The effective Agreement contains neither job descriptions or standards upon which positions, or the duties thereof, are evaluated.

The fact that these positions are enumerated is indicative that they came within the Scope of the Agreement.

Specific positions and the occupants thereof are either "covered" or "exempt" from the terms of the effective Agreement. (Rule 1).

It must of necessity be concluded that the occupants of the positions of Ticket and Information Clerks are likewise covered by, and entitled to the benefits of Rule 51, since, if it had been otherwise intended, specific exceptions could have been placed in the body of the Rule or noted by an addendum thereto.

Rule 51 or its equivalent has long been interpreted and applied to the holders of Ticket Sellers' and Information Clerks' positions.

To sustain the Respondent's contentions as contained in the docket would be to hold, in substance, that Ticket Sellers' and Information Clerks' posi-

tions were not "covered" positions, and that the holders thereof were not subject to the Seniority, Overtime, Vacation, Hours of Service or Discipline Rules of the Agreement.

The Board can not hold that such was within the contemplation of either of the parties to the Agreement.

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 Employees involved in this dispute are respectively Carrier and Employees 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 herein; and

The Carrier violated the Agreement.

AWARD

Claims (a), (b) and (c) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 17th day of April, 1952.