

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Dudley E. Whiting, Referee

PARTIES TO DISPUTE:

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

WESTERN PACIFIC RAILROAD COMPANY

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

(a) The Carrier violated the provisions of the Clerks Agreement when it blanked the position of Government Accounts Clerk from January 30 to February 28, 1951, while Mrs. Agnes McInerney, the regularly assigned occupant of the position was absent account illness.

(b) Mrs. Agnes McInerney shall now be compensated for the number of days that her position was blanked during the period January 30 to February 28, 1951, inclusive.

EMPLOYEES' STATEMENT OF FACTS: Mrs. Agnes McInerney has been in continuous service of the carrier as a clerk since February 2, 1937.

During period January 16, 1951, to February 28, 1951, inclusive, Mrs. Agnes McInerney was absent from her position of Government Accounts Clerk due to illness. She was allowed sick leave compensation for the ten working days during the period January 16 to 29, 1951, inclusive. Her position was not filled during the period January 30 to February 28, 1951; however the work normally attached to her position was kept up by other employes without additional expense to the Carrier.

POSITION OF EMPLOYEES: The following rules or portions thereof are cited from the current Agreement bearing effective date of December 16, 1943, as revised.

Rule 52: "Employes 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) Employes in service less than one year, no allowance.
- (b) Employes in service one year and less than 2 years, one calendar week (6 working days), non-penalizing.

OPINION OF BOARD: We think the claim must be denied for two reasons; first, the claimant was not available for work during the time claimed and, two, to grant it would be contrary to the provisions of Rule 52. That rule fixes specific time limits upon compensation for time lost due to personal illness and provides:

"The time limits as provided in this rule may be extended in individual, meritorious cases, upon approval of Management and General Chairman."

On the evidence presented it cannot reasonably be said that Management's denial of a subsequent request for additional allowance was arbitrary, capricious or discriminatory. To so hold on this evidence would merely be saying that the time limits would have to be extended in every case where an employe was off for more than the time limited and would nullify the rule.

Thus it is not necessary to decide whether the blanking of the position involved was a violation of the Agreement.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That both parties to this dispute waived oral hearing thereon;

That the Carrier and the Employes 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 not violated as to this claimant.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 13th day of October, 1953.