Award No. 6428
Docket No. CL-6247

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Donald F. McMahon, Referee

PARTIES TO DISPUTE:

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

CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes: that

(1) The Carrier violated its agreement with the Brotherhood when it refused to pay Checker C. Gillum, a clerical employe of its Oaklawn Stores Department, for time lost due to illness on November 17, 1950, and

(2) That the Carrier shall now be required to allow clerk Gillum for wage loss sustained thereby less such amount as was paid to other employes in the performance of the work which could not be deferred.

EMPLOYES' STATEMENT OF FACTS: The Stores Department force prior to November 17, 1950, among others not involved; consisted of the following:

	Classification	Rate of Pay
9	Checkers	$1.43 per hour
5	Helpers	1.42 " "
8	Chauffeurs	1.40 " "
3	Deliverymen	1.37 " "
2	Truckers	1.36 " "
13	Laborers	1.28 " "

The morning of November 17, 1950; clerk Gillum's wife called in and notified the Carrier that Mr. Gillum would not be in for service on that day due to illness and no question has ever been raised by the Carrier in the handling of this case on the property as to any doubt of it being a bona fide illness. In this respect it is to be noted that this was the first day in that year on which clerk Gillum had requested sick leave allowance as provided in our Agreement for clerks.

Mr. Gillum was notified on his return to service on November 18th that his time card had been marked absent for the day as it was necessary for the Carrier to fill his position.

does not include all clerical positions in the Stores Department, it will be noted that all assigned clerical positions listed were filled on claim date. A relief employe was called to fill the vacancy of the clerk absent account illness. If claimant is paid any compensation on the day absent account illness, additional expense will be incurred. Since the rule stipulates that sick leave allowance will not be paid the clerk absent account illness if additional expense is incurred, claimant is not entitled to compensation under the rule.

The agreement rules applied to the facts of record do not warrant an affirmative award and the claim must, therefore, be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The parties are in complete agreement that Claimant Gillum was a regular assigned clerical employe of Carrier at Oaklawn Stores Department. That on November 17, 1950, he lost time on account of illness, for which he was not paid his regular assigned pay of $11.44, for one day by Carrier. It is further agreed that Carrier, in the absence of Gillum, moved a laborer, drawing pay at $10.24, per day, into Gillum's position and performed his work, and for such work was paid the amount of $11.44, rate of pay specified for the position. The record further shows that no work was performed on the position left by the laborer on his regular assigned position on the day in question, and therefore no increase or additional expense was required to be assumed by Carrier, by filling the position due to illness of Claimant. Claim is made by the Organization for sick leave pay for Claimant, under Article VIII of Rule 60 of the Agreement between the parties, which covers "Sick Leave." Among other conditions applicable here, it contains the following:

> "The Employing officer must be satisfied that the sickness is bona fide, and that no additional expense to the carrier is involved."

Under prior holdings by this Board, we must conclude, that Carrier, had no additional expense, by requiring the laborer to perform the work of Claimant's position during his illness of one (1) day on November 17, 1950, and that Carrier has violated the Agreement as alleged, in its failure to pay Claimant. It will be noted in the record that as before stated, Claimant's position had a daily rate of $11.44. The laborer, in his position, drew a daily rate of $10.24, but was paid Claimant's rate, properly by Carrier at the higher rate. Therefore in computing this claim we hold that Claimant is entitled to the amount of $10.24, the amount Carrier would have paid the laborer had he worked his own position, and Carrier has suffered no increase in payroll or additional expense, by reason of the foregoing statement. It is readily clear, that if Carrier had replaced the laborer's position by another employe, and had paid such replacing employe, then this Claimant, in such event could not recover, since it would result in additional expense or payroll cost to the Carrier.

Many Awards have been cited by the Claimant, but not all are herein applicable to this case. We do reaffirm our position as set out in Award No. 2422, which claim was similar to the one before us, and also Awards 1511, 4517, 5818.

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

The Carrier has violated the Agreement.

AWARD

Claim sustained in accordance with the foregoing Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 3rd day of December, 1953.