Award No. 6710
Docket No. CL-6817

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

J. Glenn Donaldson, Referee

PARTIES TO DISPUTE:

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

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Board of Adjustment, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees:

(a) That Carrier violated rules of the Clerks' Agreement by refusal to allow Thomas Ward, employed as Locker Clerk-Checkman in the La Salle Street Station Mail and Baggage Department, Chicago, Illinois, compensation while absent from duty account personal injury;

(b) That Thomas Ward be allowed pay amounting to fifty-four (54) work days, August 16, 17, 18, 21, 22, 23, 24, 25, 28, 29, 30 and 31, and September 4, 5, 6, 7, 8, 11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 25, 26, 27, 28, and 29, 1952, at rate of $313.66 per month; and October 2, 3, 4, 5, 6, 9, 10, 11, 12, 13, 16, 17, 18, 19, 20, 23, 24, 25, 26, 27, 30 and 31, 1952, at the rate of $317.05 per month, rates of his regular assigned position.

EMPLOYES' STATEMENT OF FACTS: During August and September, 1952, the rate on Locker Clerk-Checkman position in the La Salle Street Station Mail and Baggage Department, Chicago, Illinois, assigned to Thomas Ward was $313.66, and during October, 1952, the rate was $317.05 per month. Thomas Ward's service date with the Carrier dates from October 15, 1939, Class 2, and October 23, 1944, Class I.

August 15, 1952, Thomas Ward fell down the basement stairway in his home. He was treated in his home the morning of August 15, 1952, by Dr. Carr, a physician whose office address is 63rd Street and California Avenue, Chicago, Illinois. Dr. Carr instructed Mr. Ward to stay in bed. August 16, 1952, the following day, Mr. Ward was taken to the Holy Cross Hospital, 69th Street and California Avenue, Chicago, Illinois, where he remained until August 22, 1952, at which time he was transferred to the Veterans' Hospital, Hines, Illinois.

The Chicago, Rock Island and Pacific Railroad was furnished the following statement of hospitalization by the Veterans' Hospital, at the request of Mr. Ward:

held. Under our decisions, except where an Agreement is ambiguous or indefinite, past practices do not effect enforcement of and compliance with its applicable provisions. See Awards 1671 and 2626. Article 20 (d), as we have seen is clear and unambiguous. In other words with such a contract in existence and governing the rights of the parties neither long continued acquiescence in a practice nor mutual continuance thereof after it has become effective bar its enforcement for the simple reason its provisions supersede any and all practices incompatible therewith. They may have the affect of precluding the parties from collecting penalties because of the violation but they do not preclude them from insisting upon compliance with its terms (See Awards 3521, 3979, and 4926)."

In summation, the Carrier states:

1. The framers of the Agreement recognized the distinct difference in the words "sickness" and "injury" when the word "injury" was used in Rule 35 and excluded from Rule 76 and the other rules heretofore referred to.

2. Both Awards 520 and 5695 are erroneous in that they both add the words "and injury" to Rule 76.

It is hereby affirmed that all of the foregoing is, in substance, known to the Organization's representatives.

OPINION OF BOARD: Thomas Ward, Locker Clerk-Checkman, at the LaSalle Street Station, Mail Baggage Department, Chicago, fell down the basement stairs in his home. He was hospitalized from August 16, 1952, the day following the accident, until October 28, 1952, for a Cranic-Cerebral injury. On November 1, 1952, when returning to duty, he filed claim for compensation while absent from duty on account of personal injury. The claim was denied, the Carrier stating: "We do not consider time lost because of injury the same as sickness under the provisions of Rule 76 of the Clerks' Agreement." The pertinent portion of said Rule, reads:

> "The present practice of allowing time to employes off account sickness will remain in effect, and where conditions justify the practice will be extended."

This is the third case presented by these parties concerning the same rule. The Division, with two different referees assisting, sustained claims, premised upon off-duty injuries, in Awards 520 and 5695. The first Award concerned the department here involved, but Award 5695 concerned a position on the lines of this Carrier and subject to the same Rule but at a different location and subject to a different showing of departmental practice.

On May 7, 1952, the Carrier in offering settlement of claims, including the claim of a Baggage Foreman at Chicago, for 13 days on account of off duty injury, stated:

> "I am agreeable to disposing of these claims in view of Award 520 and 5695, and I am arranging to do so but you will please accept this advice as notice that on or after June 7, 1952, Rule 76 will not be applicable to any cases where an employe is off because of injury."

The Organization replied taking exception to the Carrier's attempt to cut off future claims for off duty injury.

If there was a clear-cut, unambiguous rule involved, Carrier's letter above-quoted would effectively cut off a practice in conflict with it. But this Division has twice found no such clear-cut, definitive rule existing. It has twice said that the intent of the parties in negotiating Rule 76 was to include off-duty injury within the term "sickness." In so determining the

Divison reflected back to the history built by the parties since 1922 in applying said Rule departmental-wise. In the case subject of Award 520 it was shown that the Claimant there had in fact on one previous occasion been compensated for days absent because of an off duty injury.

To reverse this trend, we would have to now find that under no theory of interpretation can "injury" and "sickness" be held synonymous. We are not sufficiently medically wise to so find. What of the case of the broken hip that often induces pneumonia: a severe bruise which sometimes results in a morbid condition of a bone; a severe sunburn which results in chills and fever. Where does the injury terminate and the sickness commence? There should be no room for such fanciful reasoning in connection with a rule so closely and importantly tied to every day employer-employe relationship as the subject of Rule 76. However, its language as interpreted and applied by the parties for over thirty years, permits. It is rather late to expect us to so depart from our functions as to revise its application.

Our interpretation we believe to be consistent with past interpretation of the parties even though it may be contrary to the generally accepted meaning of the term. The term "sickness" does not absolutely and completely within itself connote such a singleness of meaning so as to preclude a look at practice in interpreting it.

It is said that the Referee sitting with the Division when Award 5695 was rendered undoubtedly overlooked our Award 1677 wherein we held sickness and injury are not the same. That is possible in absence of a currently-kept digest of past awards. If the award was noted, we cannot say how much weight the said Referee would have given the absence of a written sick rule in the cited award as well as the absence of a showing of practice of paying disability claims arising from injury. Further the meaning of the term "sickness" seems not to have been argued by the parties. While we do not question the correctness of the holding in Award 1677, different factual surroundings prevail in these Rock Island cases.

While the attention of this Referee has been called to paragraph 3 of Referee Garrison's Memorandum to Accompany Award 1680 the situation before us is better described in paragraph 5 thereof reading:

> "If a case is presented involving the same controlling facts and the same rule as were involved in a previous Award, and the same data and material arguments are presented as were presented in the previous case, the Award in the previous case should be followed * * *. For in such a situation there is nothing new which has not been passed upon and taken into account before, and the only question is whether the personal judgment of the latter referee * * * should be substituted for that of the former referee."

A contrary course would tend to encourage the deadlocking of future cases and discourage compliance with Board orders.

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

That claim is valid under the existing Agreement as earlier interpreted and here affirmed.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 9th day of July, 1954.