Award No. 9194
Docket No. CL-8755

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Harold M. Weston, Referee

PARTIES TO DISPUTE:

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

THE CHESAPEAKE AND OHIO RAILWAY COMPANY (Chesapeake District)

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

(a) The Carrier violated the terms of Agreement No. 7 when it failed to pay Mr. W. R. Webb account personal illness from May 30 to June 25, 1955.

(b) The Carrier violated the Agreement in not permitting Claimant Webb to work from June 26, 1955 to July 1, 1955 inclusive.

(c) The Carrier shall pay Claimant Webb as provided Section (b) of Memorandum Agreement No. 4 for the period May 30 through June 25, 1955.

(d) The Carrier shall pay Claimant Webb at the pro rata rate of his position from June 26 through July 1, 1955.

EMPLOYES' STATEMENT OF FACTS: The Claimant, Mr. W. R. Webb entered the Carrier's service on June 2, 1944. He established Group 2 seniority on July 19, 1944, and Group 1 seniority on May 10, 1945. On April 10, 1955 Claimant Webb was assigned to Position No. A-44, Westbound Yard Clerk, rate $14.19 per day.

On April 10, 1955 Claimant Webb became ill and was admitted to the C&O Railway Employes' Association Hospital at Huntington, West Virginia. On April 15, 1955 Claimant Webb was transferred to the Cincinnati Sanitarium, Cincinnati, Ohio, it having been determined that his illness was primarily of an emotional or nervous nature. Claimant Webb was discharged from the Sanitarium on May 26, 1955 and was required to return periodically for checkup. He was released to return to work and reported to the Carrier's Superintendent on June 25, 1955. The Superintendent declined to permit

when he was disqualified. With these findings before it, the Carrier should have re-examined the claimant within a reasonable time after receipt of the reports of claimant's physicians. We think that five days would have been a reasonable period under the circumstances here shown in which to examine claimant and return him to work. . . ."

The Carrier moved with promptness in the instant case to carry out its responsibility to protect the safety and welfare of its employes. In advance of any request by the claimant to return to work special consideration had been given to definitely determine the cause of the claimant's absence from work. Upon receipt of information from the claimant that he had been released by his doctors, arrangements were immediately made by telephone to have him re-examined. Claimant was promptly notified of the results of the examination and permitted to return to service. The total time to examine the claimant and return him to work consumed **only four working days.**

Conclusions

The Carrier has conclusively shown that claimant Webb's trouble was a mental condition and not **sickness.** Webb's absence, therefore, was not of such a nature as contemplated by Rule 60 and Memorandum Agreement No. 4, Supplementary to General Agreement No. 7.

The Carrier has further shown that the claimant's mental condition was such as to justify his being held out of service, and that upon receipt of information claimant had sufficiently recovered to return to work, the Carrier promptly acted to have him re-examined and returned to service. Thus, the Carrier acted only to carry out its responsibility to itself and the employes, which action was in accordance with the intent of the Agreement and not in violation thereof.

The claim in the case can have but one purpose—the broadening of application of the sick pay provisions beyond their intended and accepted bounds. The evidence shows that the Carrier moved fully within the covenants of Rule 60 and its collateral Memorandum Agreement.

The claim, therefore, should be denied in its entirety.

All data contained in this submission have been discussed in conference or by correspondence with the Employe representatives.

OPINION OF BOARD: Claimant, a Group 1 Yard Clerk at Russell, Kentucky, was admitted to Carrier's Employes' Hospital at Huntington, West Virginia, on April 11, 1955, because he complained of a nervous breakdown. He was examined by the Psychiatric Consultant there who made a diagnosis of schizophrenic reaction, acute, undifferentiated and advised psychiatric treatment in a psychiatric hospital. Both patient and his family were informed that such treatment was not furnished at the expense of the Employes' Hospital. On April 15, 1955, Claimant entered the Cincinnati Sanitarium and during his stay there received fourteen electroconvulsive treatments, thorazine, and psychotherapy. He remained in the Sanitarium until May 26, 1955, was treated on a visiting basis for several weeks thereafter and finally, on June 25, 1955, released by his own physician to return to work. On the following day, Claimant reported to the Superintendent that he was able to resume his duties as Yard Clerk but the Superintendent first referred him to

Carrier's Chief Medical Examiner who authorized his return to work on June 30. Since June 30 and July 1 were the rest days of Claimant's position, he did not actually begin work on that occasion until July 2, 1955.

During the time he had been absent from work, Claimant was at first paid under the sick leave provisions of the applicable Agreement since Carrier was under the impression that his "illness" was of the "usual" type. However, when it learned that a mental disorder was involved, it terminated the payments effective May 15, 1955, although it did compensate him for his regular vacation covering May 16 through 29, 1955.

It is Petitioner's claim that he should have been paid (1) under the Agreement's "personal illness" benefit provisions for the additional period from May 30 to June 25, 1955, the day he reported that he was able to return to work, as well as (2) for June 26 to July 1, 1955, inclusive, the time it took Carrier to restore him to his position.

The second portion of the claim is based on the premise that it was unreasonable for Carrier to insist on a new physical examination before returning Claimant to his position and that it was arbitrary and an abuse of sound discretion to refuse to put him back to work on June 26 instead of July 2. This contention lacks merit. Under the circumstances, Carrier certainly had the right and, indeed, duty to examine Claimant to satisfy itself that his return to work was consistent with the efficiency and safety of its operations. The six day period, which included two rest days, was not an unreasonable delay. Accordingly, Claims (b) and (d), in view of the limitations of the argument on which it is based, will be denied.

As to Claimant's first contention, the question involves an interpretation of Rule 60 of the Agreement and Memorandum Agreement No. 4, which provide for pay for employes absent because of "personal illness." We do not agree with Claimant's argument that "personal illness" means any condition which renders a person unable to perform the duties of his position. Obviously, such an interpretation would be far too general and unreasonable.

We do believe, however, and we hold that the language contained in Rule 60 and Memorandum Agreement No. 4 is sufficiently broad to encompass mental illness. To rule otherwise would be to close our eyes to the recognition accorded mental sickness by medical science, for today, ills of the mind, as well as nervous and emotional disorders, are considered illnesses just as surely as are body infirmities.

In our view, therefore, the "personal illness" provision is clear and unambiguous with respect to proven cases of mental illness and there is no occasion to refer to evidence of past practice to interpret the controlling rules.

Nor is it material that Carrier's Employes' Hospital Association excludes mental illness from its coverage. Hospital plans can exclude any illness agreed upon by the parties and often do so for any one of a number of reasons, including communicability of the disease, uncontrollable or disproportionate cost or lack of the necessary equipment. The Hospital Association in question, we note, also excludes venereal diseases, although they are plainly illnesses.

The only remaining question is whether Claimant suffered from an actual mental illness or a feigned or imagined condition. The record, including particularly the diagnosis of the Carrier's Employes' Hospital, Claimant's stay at a Sanitarium and the nature of his treatment there, dispels any doubt with

respect to that point. This manifestly is not a case where Claimant's condition is open to question.

In view of the foregoing considerations, we have no doubt that Claimant's condition amounted to a "personal illness" within the meaning of the Agreement and that he therefore is entitled to the benefits of its provisions.

Claims (a) and (c) will be sustained.

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 there has been a violation of Rule 60 of the controlling Agreement and Memorandum Agreement No. 4 interpreting that Rule.

AWARD

Claims (a) and (c) sustained; Claims (b) and (d) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 18th day of January, 1960.