Award No. 9479
Docket No. TE-8615

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William E. Grady, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

NORTHERN PACIFIC RAILWAY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Northern Pacific Railway, that:

1. Carrier violated the agreement when, during the calendar year 1955, it failed and refused to allow Mrs. Miriam E. Flagg compensated vacation of 10 days, earned during the calendar year 1954.

2. Carrier shall compensate Mrs. Miriam E. Flagg for 10 days at the pro-rata rate of the second day telegrapher position at Kelso, Washington.

3. Carrier violated the agreement when, during the calendar year 1955, it failed and refused to allow Mrs. Helen P. Calkins compensated vacation of 10 days, earned during the calendar year 1954.

4. Carrier shall compensate Mrs. Helen P. Calkins for 10 days at the pro-rata rate of first shift telegrapher position at Centralia, Washington.

EMPLOYES' STATEMENT OF FACTS: There is in full force and effect a collective bargaining agreement (or agreements) entered into by and between Northern Pacific Railway, hereinafter referred to as Carrier or Management, and The Order of Railroad Telegraphers, hereinafter referred to as Employes or Telegraphers. Copies of all agreements as above set out are on file with this Division of the Adjustment Board and are by reference included in this submission as though set out herein word for word.

On the property the two disputes involved herein were handled separately but since the same question is involved in both disputes, for convenience, the same are submitted to this Board in one submission. The disputes were handled on the property in the usual manner and in accordance with the Railway Labor Act as amended. The disputes having been handled through the highest officer designated by Carrier to handle such matters, and having failed of

There is no dispute in this docket about the health of Mrs. Miriam E. Flagg and Mrs. H. P. Calkins while these employes were on leave of absence in the year 1954. The Railroad Retirement Board advised that neither of these employes was allowed payment for days of sickness other than days of sickness in the maternity periods in the year 1954 under the provisions of the Railroad Unemployment Insurance Act.

The Carrier respectively submits that these employes were not absent from duty in the year 1954 because of their own sickness within the meaning of that term as used in Article I, Section 1(f), of the agreement dated August 21, 1954. It is therefore axiomatic that these employes are not entitled to credit under Article I, Section 1(f), of the agreement dated August 21, 1954 for a certain number of calendar days on which they rendered no service in the year 1954 while on leave of absence for maternity reasons.

The claim covered by this docket should be denied.

All data in support of the Carrier's position in connection with this claim has been presented to the duly authorized representative of the Employes' and is made a part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: These claims are for allowance of maternity leave time in computing service for vacation purposes.

The Claimants would have been eligible for vacation in 1955 as sought, if time spent on maternity leave in 1954 had been credited under Article 1 (f) of the National Agreement of August 21, 1954 which provides that "Calendar days in each current qualifying year on which an employe renders no service because of his own sickness . . . shall be included . . ." in computing vacations.

The Claimants experienced normal pregnancies.

The sole issue is whether normal pregnancy is "sickness" as that term is used in Article 1 (f).

A normal pregnancy is not "sickness" as the term "sickness" is commonly understood. The Organization contends, however, that in the industry the word "sickness" has acquired a special gloss and includes normal pregnancy and that the word "sickness" in Article 1 (f) bears that gloss. History of Article 1 (f) is absent.

The Organization relies on the Railroad Unemployment Insurance Act, herein called the "Law". Particular reference is made to Section 1 (k) of the Law and to certain forms of the Railroad Retirement Board.

Section 1 (k) of the Law, says that a "day of sickness . . . means a calendar day on which because of any physical, mental, psychological, or nervous injury, illness, sickness or disease [the employe] is not able to work or which is included in a maternity period, . . . and with respect to which . . . a statement of sickness is filed . . .". The forms referred to, are No. SI-100 "Maternity Benefits — How to Get Them", No. SI-101 "Application for Maternity Benefits", and No. SI-104 "Statement of Maternity Sickness".

Section 1 (k) of the Law may be read as defining days of "sickness" as those days on which an employe is absent because of sickness and those days of sickness bracketed within a maternity period. Other sections of the Law appear to distinguish between sickness and maternity; for example, Sections 1 (1) (1), (2); 2 (a), (c); 4 (a-1); 12 (g), (i) and (n).

Form SI-104, entitled "Statement of Maternity Sickness", referred to above, is, according to Section 1 (1) (1) ". . . a statement with respect to a maternity period . . . ". "Maternity period" is defined in Section 1 (1) (2) as a certain number of days before and after birth. Form SI-101, entitled "Application for Maternity Benefits", referred to above, contains a waiver of the doctor-patient privilege as to "maternity sickness" pursuant to Section 12 (n) of the Law which requires the waiver ". . . with respect to any sickness or maternity period . . .".

The Law is administered by the Railroad Retirement Board, which possesses special expertise. We need not essay to authoritatively interpret the Law. For our purposes it is not clear that the Law has assimilated sickness and normal pregnancy in the fashion for which the Organization contends, and even assuming a clear showing, it is not demonstrated that a parallel assimilation has become so established in the industry as to superimpose upon the word "sickness" in Article 1 (f), a meaning over and above that in which the word "sickness" is commonly understood.

We note that Special Board of Adjustment No. 173 (Clerks vs. Union Pacific), Case No. 14, Award No. 6 has held that normal pregnancy is not "sickness" within the meaning of Article 1 (f) of the National 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 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 the Agreement was not violated.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of June, 1960.

DISSENT TO AWARD 9479, DOCKET TE-8615

In my opinion this award takes away from the employes a portion of an important benefit for which they bargained in good faith, and is therefore in error.

The employes made a bargain with the nation's railroads to count a few days of sickness, where necessary, to make up an employe's qualifying service period in order to secure a vacation.

The negotiators, men highly skilled in the techniques of collective bargaining in the railroad industry, used the word "sickness", knowing full well that the only law of the land which uses that word in relation to this class of employes specifically defines as days of sickness those included in a maternity period. It follows that such days were intended to be counted toward an employe's vacation qualifying service period, when necessary.

But the majority here, the Carrier Members and the Referee, has ignored the plain intent of the agreement, and has sought support for its illogical decision in other languge of the Railroad Unemployment Insurance Act. Not one of those portions of the Act referred to by the majority contradicts in any way the plain definition of a "day of sickness" — set forth specifically as a definition — in Section 1 (k).

It is distressing to note the lengths to which a majority, composed as this one was, will go in order to relieve a carrier from a commitment it has made to its employes.

Carriers willingly avail themselves of the skills and special dexterity of female workers, knowing full well that their role in perpetuating the human race will at times take precedence over their employment. Our society has recognized these facts, and has provided some protection against the resulting economic hazard by including the maternity period in the "days of sickness" for which unemployment compensation is paid.

The contracting parties used the same language in making a small provision against the further economic disadvantage which results from loss of a vacation. But the majority here has nullified a portion of that contract.

This Board was never intended to function in such manner. The Award is completely erroneous, and I hereby register dissent thereto.

J. W. Whitehouse,
Labor Member.