

Award No. 10317

Docket No. TD-10312

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Charles W. Webster, Referee

**PARTIES TO DISPUTE:**

**AMERICAN TRAIN DISPATCHERS ASSOCIATION**

**CENTRAL OF GEORGIA RAILWAY COMPANY**

**STATEMENT OF CLAIM:** Claim of the American Train Dispatchers Association that:

(a) The Central of Georgia Railway Company hereinafter referred to as "the Carrier" violated the currently effective agreement between the parties to the dispute, particularly Memorandum Agreement covering sick leave, when it failed and refused to compensate Train Dispatcher R. E. Williams in accordance with the provisions of Sick Leave Agreement Section (a) 3, on specified dates set forth herein, while Train Dispatcher R. E. Williams was on sick leave.

(b) Carrier shall now compensate Train Dispatcher R. E. Williams a day's pro rata rate for each of the following dates: March 11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29, April 1, 2, 3, 4, 5, 1957,—total twenty (20) days.

**EMPLOYEES' STATEMENT OF FACTS:** There is in effect an Agreement between the parties, effective April 1, 1938, on file with your Honorable Board and by reference is made a part of this submission as though it were fully set out herein.

Sick Leave Rule effective December 1, 1951 which is particularly pertinent to this instant claim is quoted here for ready reference.

"Effective December 1, 1951, the following provisions shall apply for time off on account of sickness, without loss of pay:

"(a) 1. An employee who has been in continuous service of this Company for one year shall be allowed ten (10) working days per year.

2. Where service has been continuous as a train dispatcher for not less than two (2) years the employee shall be allowed fifteen (15) working days per year.

3. Where service has been continuous as a train dispatcher for not less than three (3) years the employee shall be allowed twenty (20) working days per year.

have the effect of showing what the Parties, through the years, have interpreted the Agreement to mean."

(4) If the Employees contend their demand is for an extension of time limits under the Sick Leave Rule, then their claim constitutes a request which must have the approval of Management as specifically required in paragraph (b) of the Sick Leave Rule. Management has not agreed to such an extension.

There is no evidence of any violation of the current agreement, and the burden of proof is upon the petitioning Employees. The claim is not valid, and should certainly be denied beyond any shadow of a doubt.

Carrier, not having yet seen the Employees' ex parte submission, reserves the right, after the Employees have set forth their position to the Board, to present such additional evidence and argument as it deems necessary.

All facts submitted in support of Carrier's position in this case have been presented orally or by correspondence to the duly authorized representative of Employees, and made a part of this dispute.

(Exhibits not reproduced.)

**OPINION OF BOARD:** This is a claim for sick leave pay. The Carrier has argued this case on both a procedural ground and on the merits. In light of the record it is clear that the Carrier's procedural objection to the case under consideration controls. There is thus no necessity to discuss the facts in this case.

The record discloses the following handling of the case on the property and the applicable provision of the Agreement.

On January 24, 1957, the parties adopted a Time Limit Rule effective February 1, 1957, which contained in Section (c) the mandatory requirements that,—

"Decision in writing by the highest officer designated to handle claims and grievances **shall be final and binding** unless within sixty (60) days after written notice of the decision of said officer he is notified in writing that his decision is not accepted." (Emphasis added).

It is clear that the Carrier's highest officer designated to handle such disputes rendered his declination of this claim in writing on August 19, 1957.

It is equally clear that the Train Dispatchers did not comply with the Rule's mandatory requirements in that they did not notify such Carrier officer within 60 days "after his written notice of the decision" in writing, that his decision was not accepted—the Train Dispatchers' notice being dated January 25, 1958, or approximately 5 months after written notice of such Carrier officer's decision.

By reason of the Train Dispatchers' non-compliance with the mandatory requirements of Section (c) of that Time Limit Rule, the written decision of such Carrier officer is "final and binding."

Thus the Carrier's decision is binding and a dismissal award is in order.

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

That the parties waived oral hearing;

That the Carrier and the Employee involved in this dispute are respectively Carrier and Employee 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 claim is barred.

**AWARD**

Claim dismissed.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
By Order of **THIRD DIVISION**

**ATTEST: S. H. Schulty**  
Executive Secretary

Dated at Chicago, Illinois, this 26th day of January 1962.