

Award No. 13733

Docket No. CL-14681

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Herbert J. Mesigh, Referee

PARTIES TO DISPUTE:

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

THE LONG ISLAND RAIL ROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5491) that:

1. The Carrier violated the Clerks' Agreement and the long established practice and understanding with the monthly rated clerical employees represented by this Brotherhood, by which all monthly rated clerical employees who have fifteen years seniority or more are allowed a specified number of sick days with pay in accordance with their seniority when it denied Clerk B. Wahlert sick pay for February 10, 11, 12, and 26, 1963, and April 1, 1963.

2. Clerk Wahlert having over fifteen years service who was unable to work on February 10, 11, 12 and 26, 1963, and April 1, 1963 account of sickness, be paid for the above mentioned days.

EMPLOYEES' STATEMENT OF FACTS: For many years prior to and subsequent to December 1, 1935, when this Brotherhood became the duly accredited representative of the craft or class of clerical and related employees on this property, it is a well known fact that there has been a past practice, custom and understanding in existence whereby the Carrier made no deduction from the wages and salaries of any of the monthly rated clerical employees, having fifteen or more years service, when they were absent from duty on account of illness. The employees were paid a certain amount of sick days according to their years of service beyond 15 years. This custom, practice and understanding has been in effect for longer years than most employees can remember. The first time this established practice was departed from according to our information was in February, 1962, and a claim was handled to the highest officer of the Carrier who sustained our request and paid the claim on June 20, 1962. (See Employees' Exhibit A.)

Furthermore, this Carrier has accepted, admitted, agreed upon and understood that the sick pay allowance was a part of the working conditions of the employees and equivalent of an agreement rule, when on August 7, 1962, it sent a letter to the General Chairman advising as follows:

" * * * It is apparent, therefore, that what this Board is asked to do is to frame a rule which may apply to situations which may arise in the future not only with respect to this employe but with respect to all others similarly situated. It has been repeatedly held that this Board has no authority to make rules. Its function is interpret them and apply them to the facts of particular cases. * * * "

Our policy with respect to payment of sick wages is the same as the Pennsylvania Railroad, which we enunciated on Page 3 hereof.

Award No. 12176 of the Third Division National Railroad Adjustment Board, relative to a dispute arising under the sick pay policy of the Pennsylvania Railroad, provides that the payment of sick wages "shall not confer any right upon any employe to demand or receive wages during disability."

This Award, of course, supports the Carrier's position in the instant case.

In summarizing, the Carrier desires to reiterate and stress the following points:

1. There is no rule in the collectively-bargained agreement governing the payment of wages to employes absent account illness.
2. The practice of allowing sick wage payments to its employes having fifteen or more years of service, has been based on the merits of each individual case, subject to approval of the Department Head.
3. Award No. 12176, Third Division, National Railroad Adjustment Board, supports Carrier's position.
4. The Board lacks jurisdiction to consider this controversy since:
 - (a) It is without power to write a new rule into the agreement between the parties.
 - (b) The controversy does not fall within the four corners of the basic Rules and Working Conditions Agreement.

Accordingly, your Honorable Board must dismiss the Employes' claim.

(Exhibits not reproduced.)

OPINION OF BOARD: Argument presented by the parties' representatives was offered for all four Dockets of CL-14302, CL-14681, CL-14682, and CL-14873.

It is agreed by the parties that the basic issue in Docket CL-14302 is the same in CL-14681, 14682, and CL-14873.

The parties to this dispute, their contentions and the rule at issue are the same as in Award 13732 and is held to be controlling in this docket.

That a violation of the Agreement has not been shown.

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 Employees involved in this dispute are respectively Carrier and Employees 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

Claim denied.

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

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

Dated at Chicago, Illinois, this 13th day of July 1965.

**LABOR MEMBER'S DISSENT TO AWARD 13733,
DOCKET CL-14681**

My Dissent to Award 13732, Docket CL-14302, is adopted as my dissent to Award 13733, Docket CL-14681.

**D. E. Watkins
Labor Member
7-29-65**