

Award No. 13735
Docket No. CL-14873

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-5593) that:

1. The Carrier violated the Clerks' Agreement and the long established practice and understanding with the monthly and weekly rated clerical employees represented by this Brotherhood, by which all monthly rated clerical employees who have fifteen (15) years seniority or more are allowed a specified number of sick days per year in accordance with their seniority when it denied Clerk A. Austin sick pay allowance for August 5, 1963.

2. Clerk Austin having over twenty-six (26) years' service, who was unable to work on account of sickness, on August 5, 1963, shall be paid one day's pay and for each subsequent day she is denied sick pay until the violation is corrected.

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

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 Employees' 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, CL-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 13735, DOCKET CL-14873

My Dissent to Award 13732, Docket CL-14302, is adopted as my dissent to Award 13735, Docket CL-14873.

D. E. Watkins

Labor Member
7-29-65