Award No. 14083
Docket No. TE-14442

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Levi M. Hall, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION (Formerly The Order of Railroad Telegraphers)

CENTRAL OF GEORGIA RAILWAY COMPANY

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

1. Carrier violated the provisions of Rule 9 (Sick Leave) of the parties' Agreement when it failed and refused to pay V. M. Farmer at Hurtsboro, Alabama a day's pay for each date January 22 and 23, 1963, in addition to the two days paid as sick leave when off duty account serious illness of his wife.

2. Carrier shall, because of the violation set forth in paragraph 1 hereof, pay V. M. Farmer two (2) days' pay at the rate of the position occupied.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an Agreement by and between the parties hereto, effective October 31, 1959, and as otherwise amended. Copies of said Agreement are, as required by law, assumed to be on file with your Board and are, by this reference, made a part hereof.

V. M. Farmer, hereinafter referred to as claimant, was on the dates involved in this claim, the regular occupant of the Agent-Operator's position at Hurtsboro, Alabama.

His employment with the Central of Georgia Railway, hereinafter referred to as Carrier, satisfies all of the requirements as to length of service with Carrier as stipulated by Rule 9 (Sick Leave) of the parties' Agreement.

Some time prior to January 19, 1963, claimant was informed by the family physician, Dr. Robert R. Daniel, that it would be necessary to hospitalize his ailing wife due to the serious nature of her illness, which, at that time, indicated a neurological condition in order that certain tests could be made to evaluate her condition, which indicated that there was some need for spinal surgery.

Claimant's wife when informed of the impending neurological tests, reacted in the same manner that most people would, when confronted with this

THIRD DIVISION AWARD 6379

(Referee Kelliher)

"**The Petitioner has failed to sustain its burden of proof to show a contract violation.**

AWARD

Claim denied."

THIRD DIVISION AWARD 6378

(Referee Kelliher)

"Based upon an analysis of all the evidence, it must be found that **the petitioners have failed to sustain the burden of proof and,** therefore, claim is accordingly denied.

AWARD

Claim denied." (Emphasis ours.)

Also see other awards, including **Third Division Awards** Nos. 8172, 7964, 7908, 7861, 7584, 7226, 7200, 7199, 6964, 6885, 6844, 6824, 6748, 6225, 5941, 2676 and others. Also see **Second Division Awards** Nos. 2938, 2580, 2569, 2545, 2544, 2042, 1996, and others — all of which clearly state that **burden is on the claimant party to prove an alleged violation of the agreement.** To date, the Petitioners have produced no evidence of any violation.

In view of all the facts and circumstances shown by the Carrier in this Ex Parte Submission, Carrier respectfully requests the Board to dismiss or deny the claim in its entirety.

OPINION OF BOARD: Claimant, V. M. Farmer, was an Agent Operator at Hurtsboro, Alabama, a one man Agency. On the time roll, covering the last half of January, 1963, he showed four days due for sick leave — January 18, 21, 22 and 23 — under Rule 9 (d) of the Agreement.

On January 31, 1963, the Superintendent, H. L. Bishop, Jr., addressed the following communication to the Claimant which is, in part, as follows:

"Due to the apparent serious illness of your spouse we are agreeable to allowing two days sick leave namely January 18 and 21 but your claim for sick leave January 22 and 23 is declined and has been deleted from time roll as it is not consistent under the existing sick leave rule of your agreement to allow these two additional days.

/s/ H. L. Bishop Jr."

On March 19, 1963, a claim was presented to the Superintendent by the General Chairman in behalf of the Claimant contending there had been a violation of Rule 9 (d) of the Agreement by the Carrier. On March 22, 1963 the General Chairman received from the Superintendent a denial of the claim containing the following language:

"Claim as presented for 2 additional days' sick leave, January 22nd and 23rd, 1963 remains declined as per my letter to claimant dated January 31, 1963."

The declination of the claim was thereafter appealed to the Director of Personnel by letter dated April 15, 1963.

It is the contention of the Carrier that the Claimant presented a claim on January 31, 1963, for four days sick leave; that, though two of the days claimed were allowed, the Superintendent's letter of January 31, 1963, was in fact a denial of the entire claim and no appeal was taken from such denial of the claim until April 15, 1963 when an alleged appeal was taken to the Director of Personnel; that this appeal to the Director was not taken within the sixty (60) day time limit provided for in Rule 20 of the Agreement and, consequently Claimant's claim is barred under the provisions of Rule 20 of the Agreement.

It is the Organization's contention that no right to present a claim in Claimant's behalf, either personally or by representation, arose until the Superintendent's denial of the allowance of two of the days claimed for sick leave, that the Claimant's grievance arose for the first time on January 31, 1963; that on March 19th, thereafter, well within the 60 days allowed for an appeal under Rule 20, a claim was presented to the Superintendent; that on March 22, 1963, a denial of the claim was received from the Superintendent and thereafter, in due course, an appeal was directed to the Director of Personnel by a letter dated April 15, 1963; that Rule 20, the Time Limit rule, has been fully complied with and the claim is not barred as contended for by the Carrier.

The question then presented is — "is a payroll submission of wages due to the Claimant a claim within Rule 20 of the Agreement?"

The following declaration contained in the Opinion of 4th Division Award 943 is quite significant:

> "The general rule which is uniformly recognized is that, unless a statute of limitations or an agreement of that character specifically provides otherwise, the period of limitation begins to run at the time when a complete cause or right of action accrues or arises. The authorities uniformly hold that the time when the aggrieved party could have conclusively determined his rights fixes the time when his cause of action accrued."

A claim arises within the meaning of Rule 20 when there is an indication that there has been a breach of the Agreement. There was no claim or grievance presented to the Carrier within the meaning of Rule 20 prior to March 19, 1963. On January 31, 1963, the Claimant had merely presented a payroll which included four days for sick leave. The breach did not occur nor did the grievance arise until the Superintendent refused to pay Claimant for two days off on account of sick leave. There has been an observance of the time limits stipulated by Rule 20 of the Agreement and the claim has not barred. Second Division Awards 2467 (Schedler) and 2480 (Schedler) arising on this same property support the foregoing conclusion.

We now pass to a consideration of the merits of the claim. It is contended by Claimant that prior to January 15, 1963, his wife was in a highly nervous condition and was suffering from a neurological condition which indicated there was some need for spinal surgery; it is his contention that he was informed by her doctor, the family physician at Hurtsboro, that it would be necessary to hospitalize Claimant's wife due to the serious nature of her illness; that, subsequently, on January 15, 1963, she was sent to a hospital at Columbus, Georgia, thirty miles from Hurtsboro, and was then referred to

a neuro-surgeon at Columbus by the family doctor and he, thereafter took charge of the case; that Claimant asked Carrier for permission to be absent from work as he had been advised that it was necessary that he; the Claimant, be by her (his wife's) side during the evaluation process. It was determined that definite surgery was not necessary and Claimant returned to work. Claimant contends that Carrier's failure to allow him pay for two of the days he was absent was in violation of Rule 9 (d) of the Agreement.

Carrier contends that Claimant failed to sustain the burden of proving that Claimant's wife's illness was serious within the meaning of Rule 9 (d) of that the time he had taken off duty was a reasonable time under that rule.

It is significant that though Claimant's wife was taken to the hospital at Columbus no claim is made for time away from work due to her illness until January 18, three days after she had been taken to the hospital. It further appears from the Record that Claimant's family physician referred the care of the wife to a neuro-surgeon at the time of her admission to the hospital on January 15, 1963. The only evidence that Claimant has offered corroborating his claim is a statement made by the family physician that he thought it was necessary for Claimant to be at the side of his wife in the hospital due to her nervous condition — this statement was not signed by the doctor until March 18, some two months after the wife's confinement in the hospital. It is quite significant, too, that no statement by the neuro-surgeon in charge of the case at the hospital was offered in support of the claim of the Claimant.

By reason of the foregoing circumstances the Board is convinced that Claimant has failed to sustain the burden of proving that his wife's illness was "serious" within the meaning of Rule 9 (d) of the Agreement and that the length of time he remained away from work was "reasonable' 'as provided for in the rule under all of the facts and circumstances. The Board is convinced that the claim should be denied on the merits.

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 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

There has been no violation of the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 12th day of January 1966.