Award No. 16591
Docket No. TE-15646

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John J. McGovern, 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 parties' Agreement when it failed and refused to allow Mr. J. C. Pate, Jr., telegrapher-operator at Opelika, Alabama, sick leave pay for February 10, 11, 12 and 15, 1964.

2. Carrier shall, because of the violation set out above, compensate Mr. J. C. Pate, Jr. four (4) days sick leave allowance at the rate of his position.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an Agreement by and between the Central of Georgia Railway Company, hereinafter referred to as Carrier, and its employes in station, tower, and telegraph service, hereinafter referred to as Employes, represented by The Order of Railroad Telegraphers, hereinafter referred to as Organization, effective October 31, 1959, and as amended. Copies of said Agreement are available to your Board and are, by this reference, made a part hereof.

J. C. Pate, Jr., hereinafter referred to as claimant, was on the dates involved in this claim, the regular occupant of the rest day relief position headquartered at Opelika, Alabama. His relief assignment performed rest day relief service on the first shift at Opelika on Saturday and Sunday, second shift on Monday and Tuesday, third shift on Wednesday — his rest days were Thursday and Friday.

Claimant's seniority date with Carrier under the Telegraphers' Agreement was March 3, 1948.

The record shows that claimant was on sick leave from September 13, 1963 until February 28, 1964. He resumed duty on his regular position on Monday, March 2, 1964. On the first period payroll for February, 1964, claimant claimed four (4) days sick leave namely, February 10, 11, 12 and 15, pursuant to the

The Petitioners have failed in all handlings on the property to cite a rule, interpretation or practice which gives them what they are here demanding. Not knowing of any rule, interpretation or practice that has been violated in any manner whatsoever, the carrier has denied the claim at each and every stage of handling on the property. The claim has absolutely no semblance of merit. It is a claim involving all-to-gain-and-nothing-to-lose . . . pure and simple. It is unfortunate that Mr. Pate has, through the years, used up all of his sick leave, and it is unfortunate that he suffered at least two heart attacks (according to our information), but the rule just does not require the unearned pay here demanded.

The rules and working conditions agreement between the parties is effective October 31, 1959, as amended. Copies are on file with your Board, and the agreement, as amended, is hereby made a part of this dispute as though reproduced herein word for word.

OPINION OF BOARD: Claimant was the regular occupant of the rest day relief position headquartered at Opelika, Alabama. His rest days were Thursdays and Fridays and his assignment encompassed various shifts Saturday to Wednesday inclusive. His seniority date with the Carrier under the telegraphers' Agreement was March 3, 1948. He was absent from his assignment from September 13, 1963 to February 28, 1964 because of illness. He returned to duty on Monday, March 2, 1964 and on the first period payroll for February 1964, he claimed four days sick leave, February 10, 11, 12 and 15 invoking the provisions of Rule 9 — Sick Leave. This rule reads as follows:

"RULE 9. SICK LEAVE

It is hereby agreed that the following provisions shall appy for time off on account of sickness, without loss of pay:

(a) 1. An employe who has been in continuous service of the company one year shall be allowed five (5) working days per year.

(2) Where service has been continuous for not less than two (2) years, the employe shall be allowed seven and one-half (7½) working days per year.

3. Where service has been continuous for not less than three years, the employe shall be allowed ten (10) working days per year.

4. An employe who has been in continuous service five (5) years or more will be allowed additional sick leave on the following basis: any sick leave not utilized during the year following the effective date of this agreement, or thereafter, may, in case of extended illness, be added to the annual sick leave, but such accumulated allowance shall not exceed thirty (30) working days per year.

b. The employing officer must be satisfied that the illness is bona fide. Satisfactory evidence in the form of a Certificate from a reputable physician, preferably a company

physician, will be required in case of doubt. The Local and General Chairman will cooperate with the Official when doubt exists.

(c) In the application of this rule it is understood that where there is no necessity for a position to be kept up daily, it may be blanked or the duties assigned to the remaining employes in the office. No overtime, Sunday or holiday work will be required of the remaining employes by reason of the granting of the sick leave.

Nothing in this rule shall prevent the Management from granting other or further extensions of sick leave beyond the above specifications, at its election.

(d) In case of serious illness or death in the immediate family of an employe a reasonable length of time will be allowed off duty, subject to the provisions of paragraph (a). Such time will be charged against the employe under the provisions of paragraphs (a) and (b) as sick leave.

Effective December 15, 1954, the following interpretations are agreed upon:

(a) 4. An employe who has been in continuous service five years or more will be allowed additional sick leave on the following basis: Any sick leave not utilized during the year following the effective date of this Agreement or thereafter, may, in the case of extended illness, be added to the annual sick leave, but such accumulated allowance shall not exceed thirty (30) working days per year."

The intent of the above quoted portion of the Sick Leave Rule is to take care of one case (but not more than one) of "extended illness" in any sick leave year. (Under the Telegraphers' Agreement the sick leave year is a Calendar year.) That an "extended illness" is a continuous one over a period in excess of 10 working days (11 to 30 days, inclusive).

Any sick leave not utilized during the preceding sick leave year may be added to the 10 work days sick leave in the year in which the extended illness occurs, thus providing for a maximum sick leave allowance of 30 work days in the year which the extended illness occurs. If the extended illness in that sick leave year, exceeds 30 work days, the maximum payment would be for 30 work days. On the other hand, if the extended illness was for say 25 work days, the remaining 5 work days would be carried over into the next sick leave year.

As an example, an employe utilized his 10 work days sick leave on sporadic illness. He has a 30 day accumulation. He then has an extended illness of 25 working days. He would be paid for his 10 days of sporadic illness and 20 days of his extended illness — a total of 30 days. He would lose 5 days pay. His carryover into the next sick leave year would be the 10 days left from his accumulation.

Had this employe not utilized his 10 work days for sporadic illness, he would have been paid for the entire 25 days sickness from his 30 day accumulation, leaving a 15 day carryover consisting of 10 work days for that year plus 5 days left from his accumulation, or he could then utilize his yearly sick leave allowance up to 5 work days account sporadic illness, and would have a 10-day carryover.

Regardless of whether he used his 10 days allowance for sporadic illness first and then had an extended illness, or whether he had an extended illness first and then had sporadic illness — in no case could he receive more than 30 days sick leave in one sick leave year.

Further, it is hereby agreed that Rule 9, paragraph (d), is defined as follows:

> "The 'immediate family' is understood to mean the father, mother, father-in-law, mother-in-law, brother(s), sister(s), husband, wife, child or children of the employe.'

The Organization argues that since Claimant had been in the continuous service of Carrier for a period in excess of five (5) years, in accordance with the provisions of paragraph 4 of Rule 9 and the agreed upon interpretation thereof, effective December 15, 1954, he was entitled under paragraph 3 of the rule to ten (10) working days sick leave per year, and in the event of extended illness an accumulated allowance not to exceed thirty (30) working days per year. They further contend that regardless of what happened in 1963 Claimant should be granted ten (10) days sick leave beginning with calendar year January 1, 1964, and ending December 31, 1964. They further aver that since his seniority was not broken by his illness and as long as he remained on the rolls of the Carrier, he retained whatever rights the contract gave him based upon continuing seniority, relying principally on Awards 14 and 15, Special Board of Adjustment No. 269 on this same property.

The Carrier contends that Claimant during the period of his illness was not in "continuous service" and therefore is not entitled to the pay claimed, that continuous service does not mean having one's name on a seniority roster for one, two, three as any given number of years and refer us to Webster's Third New International Dictionary which defines the word "continuous" as follows:

> "a. Characterized by uninterrupted extension in space: stretching on without break or interruption. b. Characterized by uninterrupted extension in time or sequence: continuing with intermission.

and the word service means:

> 2. The performance of work commanded or paid for by another. Action or use that furthers some end or purpose: conduct or performance that assists or benefits someone or something. Useful labor that does not produce a tangible commodity — USU. used in pl. (railroad, telephone companies, and physicians perform -s although they produce no goods)."

Carrier in furtherance of its position propounds the argument that the word continuous is the key word in the cited rule and that since its ordinary

and generally understood meaning is without break, cessation or interruption, Claimant has no basis for his action in this case.

We have reviewed and considered the arguments advanced by both sides in this controversy. The cited rule, which governs the disposition of this case is clear, precise, unambiguous and in our judgement not susceptible to the interpretation which Carrier urges upon us. Claimant, although absent from his assignment because of illness, was for all intents and purposes still an employe of the Carrier. The relationship was that of employer-employe, the best argument for this being his subsequent return to duty without any question being raised by Carrier as to his status. His seniority was unimpaired and unaffected by his prolonged illness. He was therefore in continuous service as those words were meant to be construed by the parties. To hold otherwise would mean that one day's illness would interrupt an employe's service, thus effectively rendering sick leave provision of the contract nugatory. Further, Claimant remained on the rolls of the Carrier and having had far in excess of five years service, was entitled to 10 days sick leave beginning on January 1. It was not within the contemplation of the contracting parties that an employe must actually perform his duties at the beginning of the calendar year as a condition precedent to qualifying for sick leave. If this was the intent of the parties, language could have been inserted in the contract to specifically state that intent. The language adopted militates against such an intent. We will accordingly sustain the claim. (See Awards 14 and 15 of Special Board of Adjustment No. 269.)

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 Employe 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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of September 1968.

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