



Award No. 16593
Docket No. TE-15759

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John J. McGovern, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION

CENTRAL OF GEORGIA RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees on the Central of Georgia Railway, that:

1. Carrier violated the terms of an Agreement between the parties when it failed and refused to allow R. V. Shepherd, regular occupant, second shift Operator Clerk's position, Tennille, Georgia ten (10) days' sick leave pay.

2. Carrier shall, because of the violation set out in paragraph one hereof, compensate R. V. Shepherd a day's pay, at the rate of the position occupied, for March 10, 11, 12, 13, 14, 17, 18, 19, 20 and 21, 1964 — total of eighty (80) hours at \$2.5688 per hour, total amount \$205.50.

EMPLOYEES' 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 employees in station, tower and telegraph service, hereinafter referred to as Employees, represented by Transportation-Communication Employees Union (formerly The Order of Railroad Telegraphers), hereinafter referred to as Union, effective October 31, 1959, and as amended and supplemented. Copies of said Agreements are available to your Board and are, by this reference, made a part hereof.

An analysis of the material and relevant facts of record show that R. V. Shepherd (now deceased), hereinafter referred to as Claimant, was the regular assigned occupant of the 2nd shift Operator Clerk's position at Tennille, Georgia on the dates involved in this claim. That he held a seniority date of July 1, 1917 with the Carrier. That he worked 77 days in 1963. That pursuant to the provisions of Rule 9 - Sick Leave - he filed a claim with the proper authority of Carrier for sick leave pay for March 10, 11, 12, 13, 14, 17, 18, 19, 20 and 21, 1964. TCU Exhibit 1.

On April 6, 1964, by letter addressed to Superintendent J. A. Ryle, the District Chairman instituted formal claim in behalf of Claimant for ten (10) days' sick leave for the calendar year 1964. TCU Exhibit 2. The Superintend-

A copy of the above letter was sent to Vice President H. W. Waters with the notation that his decision was rejected.

Director of Personnel Tolleson on September 14, 1964 acknowledged receipt of the appeal to him.

Under date of October 28, 1964, Director of Personnel Tolleson addressed the following letter to General Chairman Hardison of the Organization:

"Referring to your letter of September 12, 1964, appealing claim filed for and in behalf of Operator-Clerk R. V. Shepherd, Tennille, Georgia, for 10 days' sick leave pay, i.e., March 10, 11, 12, 13, 14, 17, 18, 19, 20 and 21, 1964.

In reviewing the papers in the claim file, I see no reason for disturbing the decision given you by Superintendent J. A. Ryle in his letter of June 4, 1964, and by Vice President Waters in his letter of September 1, 1964. For the reasons set forth in their letters, and in the absence of agreement support of the claim, I must respectfully decline to allow payment."

A conference for December 21, 1964, was arranged by Director of Personnel Tolleson with General Chairman Hardison. The subject claim was fully discussed, and previous declination reaffirmed.

The Organization has 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. Shepherd became sick, 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 in this case held a seniority date of July 1, 1917. A claim has been submitted for ten days' sick leave for March 10, 11, 12, 13, 14, 17, 18, 19, 20 and 21, 1964, based principally on Article 9, Section (a) - Sick Leave - of the parties' Agreement. The pertinent portion of this Agreement read

"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 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."

This issue has been presented and decided in Award 16591. The key words in Article 9 are "continuous service." Carrier argues that at the beginning

of each calendar year, an employee must actually be on the job performing his duties and responsibilities before being entitled to sick leave. As we stated in our Award 16591, we cannot agree with Carrier's position. Claimant most assuredly, under any interpretation, must be said to have been an employee of Carrier and was in an employee-employer relationship during the year 1964. It is inconceivable that having been employed by Carrier since 1917, he could construe the contractual language to mean that he was not in "continuous service" as these words were contemplated by the contracting parties. To do so would do violence to the plain intent of the contract itself. We will sustain the claim.

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 Employee 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 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.