



Award Number 17938

Docket Number CL-18095

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John J. McGovern, Referee

PARTIES TO DISPUTE:

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

**CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD
COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6524) that:

- 1) Carrier violated the Clerks' Agreement at Milwaukee, Wisconsin when it failed and refused to allow employee S. F. Kluck sick leave payment for July 17, 1967.
- 2) Carrier shall be required to compensate S. J. Kluck for eight (8) hours at the straight time rate of Yard Clerk Position 07500 for Monday, July 17, 1967.

EMPLOYEES' STATEMENT OF FACTS: Employee S. F. Kluck is the regularly assigned occupant of Yard Clerk Position 07500 at Muskego Yard, Milwaukee, Wis. from 7 A.M. to 3 P.M., Thursday through Monday, with rest days of Tuesday and Wednesday.

During the period July 10 through 17, 1967, employee Kluck was confined in St. Luke's hospital account thyroid trouble.

On July 16 and 17, 1967, Carrier was struck by the Shop Craft Organizations and Carrier's operation was at a standstill. Employee Kluck, however, was not notified that his position was abolished due to the strike by the shop craft employees.

When employee Kluck received his paycheck on August 14, 1967 to cover the July 15th through 31st, 1967 payroll period, he found it to be short in the amount of one day's pay. Upon making inquiry with respect to the shortage, he was notified by Agent Chalifoux that his sick allowance for July 17, 1967 "was disallowed account of the strike—per ruling from Chicago."

Claim was made for sick leave payment for July 17, 1967 and was declined by Agent Chalifoux on September 25, 1967. See Employees' Exhibit "A". Claim was appealed to Superintendent R. H. Love on October 12, 1967 who declined it on November 8, 1967. See Employees' Exhibit "B". Appeal from the decision of the superintendent was taken to Vice President-Labor Relations S. W. Amour who declined the claim on February 1, 1968. Discussion of the claim during conference on July 10, 1968 produced no settlement.

Time limits in this case were extended by agreement between the parties for a period of thirty (30) days or until December 1, 1968.

of existence, having been abolished under the "emergency conditions" (strike) portion of aforementioned Rule 12(a).

Claimant Kluck was not allowed sick payment on July 18 or 19, 1967 because those days were not working days as provided for in aforementioned Memorandum No. 2, but instead were rest days of the position (Yard Clerk Position No. 07500) from which claimant Kluck was absent account sickness.

Attached hereto as Carrier's Exhibits are copies of the following:

Letter written by Mr. S. W. Amour, Vice President—
Labor Relations, to Mr. H. C. Hopper, General Chairman, under date of February 1, 1968Carrier's Exhibit "A"

Letter written by Mr. Amour to Mr. Hopper under date
of February 15, 1968Carrier's Exhibit "B"

(Exhibits Not Reproduced)

OPINION OF BOARD: Claimant was the regularly assigned employee of the Yard Clerk position at Muskego Yard, Milwaukee from 7 A.M. to 3 P.M., Thursday through Monday, with rest days of Tuesday and Wednesday. From July 10th through July 17th, the Claimant was a patient in a hospital. On July 16 and 17, The Shop Craft Organization went on strike thus curtailing Carrier's operations. Due to the strike, Claimant's position was abolished. Carrier posted a bulletin notice abolishing all clerical positions in the seniority district in which Claimant held seniority, said notice being posted prior to 3:00 P.M., July 16, 1967. When he received his paycheck covering the July 15 through 31st, 1967 payroll period, he noted that he was short in the amount of one day's pay. He has therefore filed a claim for sick leave pay for July 17, 1967.

The Organization contends that under Rule 12 (a) employees whose positions are abolished under emergency conditions must be given at least 16 hours advance notice. This Rule, paragraph 12 (c), and Memorandum 2, upon which reliance is made, read

"RULE 12—REDUCING FORCES

"(a) In reducing forces, employees in Groups 1 and 2, Rule 1, and regularly assigned employees in Group 3, Rule 1, whose positions are to be abolished, will be given not less than five (5) working days advance notice except that not more than sixteen (16) hours advance notice of abolishment of positions or reductions in force will be required under emergency conditions, such as flood, snow-storm, hurricane, earthquake, fire or strike, provided the Carrier's operations are suspended in whole or in part and provided further that because of such emergency, the work which would be performed by the incumbents of the positions to be abolished or the work which would be performed by the employees involved in the force reductions no longer exists or cannot be performed. . . ."

"(c) In reducing forces in an office, the lowest rated positions in the class in which the reduction occurs will be abolished.

"When bulletined positions are abolished, notice will be placed on all bulletin boards in the seniority district affected and a copy of same will be furnished to the local, division and general chairman. Such bulletin notice shall include the names of employees filling the positions abolished at the time abolished."

"MEMORANDUM NO. 2

"It is agreed that effective September 1st, 1949, Memorandum No. 22 (dated November 30th, 1945) will be revised to read as follows:

'Regularly assigned clerical employees will be granted pay for time absent account sickness as follows:

* * *

'(D) Employees with three years or more seniority as a clerk — ten working days.'

The principal issue is whether the rules of the Agreement require that an employee who is absent from work because of illness must be personally notified that his position has been abolished. The notice in this case was dated July 16th and it was posted prior to 3:00 P.M. Since Claimant's work hours did not theoretically commence until 7:00 A.M., July 17, the Carrier was in compliance with the 16 hour notice if Claimant had been on duty rather than sick.

Notice of abolishment of positions in accord with paragraph (c) above only requires that it be placed on the bulletin board. There is no requirement that an employee who is absent sick must be personally notified. Although it is true that the local or General Chairman did not receive a copy of such notice, we do not find this to be of controlling significance in this case. Such did not adversely affect the Claimant. We find no violation of the Agreement and will deny the claim.

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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 21st day of May 1970.