

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19633
Docket Number CL-19390

Thomas L. Hayes, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
PARTIES TO DISPUTE: (
(The Chesapeake and Ohio Railway Company
((Chesapeake District)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6967)
that:

(a) The Carrier violated the Agreement when it did not pay Claimant Clarence Horsley for October 23, 1969, at the rate of \$24.15 per day.

(b) The Carrier shall pay Claimant Clarence Horsley one days pay at \$24.15, the rate of Laborer's position C-42 which he would have worked had he not been sick.

OPINION OF BOARD: At the time of the matter complained of, Claimant Clarence Horsley held seniority in Group 3 Stores Department Roster, Russell, Kentucky Seniority District. Because of force reduction, on September 22, 1969, he no longer stood for a position with five days guaranteed work. Claimant requested under Rule 18 (d) that he be used as a cut-off employee to fill temporary vacancies in keeping with his seniority.

On October 23, 1969 Claimant was ill and unable to accept the call to work Laborer Position C-42 with respect to which he had preference. He filed a claim for sick-time and the claim was declined.

The Organization contends that Claimant should be compensated under Rule 60 and Carrier contends that the provisions of Rule 60 do not provide for sick pay benefits to cut-off employees.

The question at issue is whether cut-off employees are entitled to sick pay benefits under Rule 60 or whether the Rule protects only regularly assigned employees. The text of Rule 60 is set forth below:

"RULE 60 - ABSENT ACCOUNT PERSONAL ILLNESS WITH PAY

"1. There is hereby established a non-governmental plan for sickness allowances or sickness allowances supplemental to the sickness benefit provisions of the Railroad Unemployment Insurance Act as now in effect or as hereafter amended. The purpose of this plan is to provide sickness allowances to employees absent account of illness and to supplement the benefits provided under the Railroad Unemployment Insurance Act where benefits are payable thereunder.

"2. The plan provided for herein contemplates that on any given day for which an employe is entitled to benefits under both the Railroad Unemployment Insurance Act and this Rule that the Carrier shall supplement the benefits provided under the Act and received by the employe to the extent of the difference in benefits provided under the Act and that provided in this Rule (but only for days on which the employe would have had a right to work with a maximum of five (5) days supplemental benefits in any calendar week).

"3. Beginning on the first day an employe is absent from work due to personal illness (not including pregnancy) and extending in each instance for the length of time determined by the provisions of the subsections of this Section 3, each such employe shall be entitled to a sickness allowance for such days of illness on which he otherwise would have worked (subject to the provisions of Section 2 hereof) in accordance with the schedule of benefits set forth in the following subsections:

"(a) Employes with less than 2 years service - $\frac{1}{2}$ pay after 5 working days lost but not exceeding 5 days in any calendar year.

"(b) Employes with 2 to 5 years service - entitled to 5 days pay after first 5 working days lost in any calendar year.

"(c) Employes with 5 years to 10 years service - entitled to 10 days without any waiting time in any calendar year.

"(d) Employes with 10 or more years service - entitled to 20 days without any waiting time in any calendar year.

"(e) Employes may accumulate unused sick leave for previous years up to a maximum of 60 full time days.

"4. The supervising officer of the Carrier will supply employes entitled to file for sickness benefits under the Railroad Unemployment Insurance Act the necessary papers for filing claim and supplying the Carrier such information as it may need in connection therewith in order to facilitate the collection of money due the employe from the Retirement Board and the making of payment by the Carrier of any supplemental benefits due the employe under the provisions of this Rule.

"In the event an employe forfeits sickness benefits under the Railroad Unemployment Insurance Act for any day of sickness because of his failure to file for such benefits, he shall only be entitled to any Carrier paid supplemental benefit due for that day, except where the failure to file was unavoidable.

"5. It will be optional with the Carrier to fill or not fill the position of an employe who is absent account of personal illness, including the first five (5) days of an employe with less than five (5) years service who is absent account of personal illness, under the provisions of this rule. If the Carrier elects to fill the vacancy the rules of the Agreement applicable thereto will apply. The right of the Carrier to use other employes on duty to assist in performing duties of the position of the employe absent under this Rule is recognized provided, however, the absentee's work performed by 'other employes' is performed within the assigned hours of the 'other employes'.

"6. The employing officer must be satisfied that the illness is bona fide. Satisfactory evidence in the form of a certificate from a reputable doctor will be required in case of doubt. The Local Chairman and the General Chairman will cooperate with the Railway to the fullest extent to see that no undue advantage is taken of this rule.

"7. Before applying the foregoing provisions the Carrier shall determine, under the principles stated in this paragraph, whether sick leave compensation or supplemental allowances are to be paid. Any employe who is not entitled to Railroad Unemployment Insurance Act sickness benefits by virtue of insufficient earnings in a base year or where period of illness is not of sufficient length to satisfy a waiting period will be paid compensation, and all such amounts paid will be reported as compensated sick leave. In all other instances supplemental allowances will be paid and they will not be reported as compensation.

"8. For the time necessary to attend funeral and handle matters related thereto, in the event of death of a spouse, child, parent, parent-in-law, brother or sister of an employe who has been in service one year or more, unused 'sick leave' days which have accrued to him under this rule (not exceeding three consecutive work days unless, in individual hardship cases, local agreement is otherwise reached) may be used, which will be deducted from the time which he would otherwise have available for time lost account personal illness."

Carrier argues that in the past it has not been the practice to grant other than regular assigned employes sick pay benefits under the application of the provisions of Rule 60 and that revised Rule 60 in no manner alters the situation.

The Organization concedes that it was not the practice or policy of the Carrier to grant sick leave to cut-off employees before October 1, 1969, under the former policy which states:

"The policy of the Management is to be liberal in the matter of allowing pay for Group 1 employees, telephone switchboard operators, crew callers, messengers and file assorter absent account personal illness, except where undue advantage is taken of this policy."

However, the Employees say that it is an "Agreement" not "policy" that now controls, referring to the October 1, 1969 Agreement on a non-governmental plan for sickness allowances or sickness allowances supplemental to the sickness benefit provisions of the Railroad Unemployment Insurance Act.

In a previous Award, 19483, the Board was called upon to decide whether Rule 60 was restricted in its scope to regularly assigned employees or whether it applied to all cut-off employees as well. The Board in that award stated:

"...we find that the intent to cover a cut-off employee is manifest within the confines of Rule 60, itself, and, consequently, we will not enforce a contrary prior practice."

We think Award 19483 involving the same Carrier and the same Organization is dispositive of the instant case.

In our prior award we brought into focus the references to the words "employee" and "employees" in various paragraphs of Rule 60 as follows:

"Paragraph 1: ...The purpose of this plan is to provide sickness allowances to employees absent account of illness...

Paragraph 2:(but only for days on which the employee would have had a right to work with a maximum of five (5) days supplemental benefits in any calendar week).

Paragraph 3: Beginning on the first day an employee is absent from work due to personal illness...each such employee shall be entitled to a sickness allowance for such days of illness on which he otherwise would have worked....."

It is clear from the foregoing that the parties intended the words "employee" and "employees" be used in an unqualified manner and the Board has no authority to rewrite the Agreement and limit the meaning of the words "employee" and "employees" by, in effect, adding the restriction "regularly assigned" in front of each.

Where the language of an Agreement is plain and unambiguous, we enforce the Agreement as written and we can not alter it to conform to past practice.

The Board concludes here, as it did in Award 19483 that Rule 60 applies to all employees absent because of illness.

The claim is therefore sustained.

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 Employee involved in this dispute are respectively Carrier and Employee 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.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

E. G. Killen
Executive Secretary

Dated at Chicago, Illinois, this 27th day of February 1973.