

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20024
Docket Number CL-19962

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(
(The Kansas City Southern Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7240)
that:

(1) Carrier violated Rule 45(b) of the current Clerks' Agreement, in addition to Article I, Section 1, of the February 7, 1965 National Stabilization Agreement, when Carrier withheld Mr. D. C. Castle from service to the Carrier, after completing his eight hour assignment on August 12, 1971, until Claimant obtained a "doctors' slip" and when Carrier refused to compensate Mr. Castle for time lost.

(2) Carrier shall compensate Mr. D. C. Castle for eight (8) hours pro rata on August 13, 16, 17, 18, 19, 20, 1971 while withheld from service to obtain "doctors' slip".

OPINION OF BOARD: When Claimant completed his regular 7:00 a.m. to 3:00 p.m. assignment on August 12, 1971, the Assistant Trainmaster requested him to continue work on an overtime basis. Claimant refused, stating that he was ill, at which time he was advised that a medical release would be required before he could return to work.

During the evening of August 12, 1971, Claimant contacted the Assistant Trainmaster on duty who "marked up" Claimant to work his regular assignment on August 13. The record is not clear if the second Assistant Trainmaster was fully aware of all of the circumstances, or if he assumed that Claimant had obtained a medical release. In any event, Claimant reported for duty at 7:00 a.m. on August 13, 1971. When asked if he had a medical release, he stated that he was unable to see a doctor the previous day and it would not be possible to contact his doctor until at least 9:00 a.m. that day. Again he was advised that he could not return to work without a medical release.

Claimant called his regular doctor at 9:30 a.m. on August 13, 1971 but was advised that he could not have an appointment until August 20, 1971. He then contacted his wife's doctor, but was told that no appointments were available until late September. He re-contacted his doctor and confirmed the August 20, 1971 appointment.

There is nothing in the record to suggest that Claimant could have obtained an appointment with greater haste. Although there is a reference to a discussion between a Carrier official and the Local Chairman wherein it was suggested that the Carrier could have arranged for an earlier appointment, the record is devoid of any indication that such information was ever given to Claimant, or that Carrier offered any assistance concerning obtaining a medical release.

The basic Carrier position was confirmed in writing to Claimant on August 16, 1971 and Claimant was advised that he was considered as being "off account illness" until a satisfactory medical release was furnished,

Claimant immediately objected to the Carrier's August 16, 1971 characterization of his status. He stated that he had no objection to securing a medical release, but that he would not expect to lose any guaranteed wages as a result of Carrier's directive.

Carrier defends its request under Rule 54(b) of the Agreement;

"Rule 54. (a) Where the work of an employee is kept up by other employees without cost to the carrier, a clerk who has been in continuous service of the Carrier one year and less than two years, will not have deductions made from his pay for time absent on account of bona fide case of sickness until he has been absent five working days in the calendar year; a clerk who has been in continuous service two years and less than three years, seven and one-half working days; a clerk who has been in continuous service three years or longer, ten working days. Deductions will be made beyond the time allowance specified above.

(b) The employing officer must be satisfied that the sickness is bona fide, and that no additional expense to the Carrier is involved. Satisfactory evidence as to sickness in the form of a certificate from a reputable physician, preferably a company physician, will be required in case of doubt. The above limits of sick leave may be extended in individual meritorious cases and under the conditions specified, but only by agreement of the representatives of the Carrier and the employees."

The Organization urges that Rule 54(b) does not apply in this case and that the withholding of Claimant from service was a form of disciplinary action, citing Carrier's Ex Parte Submission as follows:

"As the facts show: Carrier had every reason to doubt the Claimant's actions taken on August 12, 1971. If indeed claimant was really sick, it was for his own benefit that the Carrier instruct him to see a doctor and not to return until he had a medical release. Rule 54(b) between the Kansas City Southern Railway Company and the Brotherhood of Railway, Airline and Steamship Clerks dated April 1, 1943, contains the language,...."Satisfactory evidence as to sickness in the form of a certificate from a reputable physician, preferably a company physician, will be required in case of doubt."

Leaving aside whatever other rights Carrier may have had, the Board is not inclined to agree that Rule 54(b) is applicable to these facts.

Rule 54(a) speaks in terms of sick leave entitlement. Rule 54(b), in that same context, refers to satisfactory evidence as to bona fide sickness in case of doubt. But, as we read Rule 54 in its entirety, it deals with reasonable assurances to the Carrier when an employee seeks to obtain the benefits of that Rule. Instead of seeking sick leave benefits, Claimant attempted to report for duty but was precluded from doing so.

The Board does not mean to suggest that a Carrier is necessarily without recourse if it feels that an employee acts in bad faith. But, in such a circumstance we feel that a Carrier should take appropriate action and frame a specific issue rather than rely on a Rule which deals with an entirely different concept. We are not unmindful of Fourth Division Award No. 2818 (Weston) relied upon by Carrier, nor do we feel that it is inappropriate to its own circumstances. We do feel, however, that the facts here are distinguished from the facts giving rise to Award No. 2818.

Noting that absent a rule to the contrary, the requirement of a physical examination is within the Carrier's discretion, that Award held:

"In the present case, Claimant left work abruptly only two hours after his tour had begun and appeared to be emotionally disturbed at the time. Under these circumstances, it does not appear to be cavalier for Carrier to require him to be examined by the Company physician before returning to work. There is no indication that the requirement was imposed in bad faith or as a penalty or disciplinary action."

The elements which prompted the result of Award 2818 are lacking here. The Claimant here did not leave a regular assignment in an abrupt manner or in an emotionally disturbed state, nor did Carrier here require Claimant to be examined by the Company physician.

Even under the facts of Award 2818, the Referee was "concerned" that a physical examination was not given more promptly.

Upon a consideration of this record the Board is of the view that Carrier's reliance on Rule 54(b) is misplaced. Had the Carrier taken different action, other issues may have been appropriately joined, but they are not before us in this Docket.

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 violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauler
Executive Secretary

Dated at Chicago, Illinois, this 31st day of October 1973.