NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 20406
THIRD DIVISION Docket Number CL-20365

Frederick R. Blackwell, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes
(Chicago, Milwaukee, St. Paul and Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7346) that:

1) Carrier violated the provisions of the Clerks' Rules Agreement when it refused to pay employe A. Roshko for time absent account of sickness occurring on November 9 and 10, 1971.

2) Carrier shall now be required to compensate employe A. Roshko for two days' pay in the amount of $71.00 for November 9 and 10, 1971.

OPINION OF BOARD: On November 9, 1971, the Claimant phoned in sick; she did not work on November 9 and 10, 1971. On November 11, 1971, she submitted a request for sick leave payment for November 9 and 10. On December 6, 1971, her Supervisor sent her a written form requesting satisfactory evidence of illness in the form of a certificate from a reputable physician. The Claimant responded to this form in a December 13 letter in which she asked the Supervisor to give his reason for doubting that she was sick. The Supervisor replied on December 15 that he was under no obligation to provide such reason and that he was awaiting her reply to his request of December 6. The Claimant then wrote on December 21, 1971 that her illness did not need doctor's care and that she had treated herself. Subsequently, the Carrier refused to make the sick leave payment, whereupon a claim was filed on the premise that such action violated Memorandum of Agreement No. 2.

Memorandum No. 2, in pertinent part, reads as follows:

> "(H) The employing officer must be satisfied that the sickness is bona fide. 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 Employees argue that: (1) the Carrier should have given the reason for the doubt about the genuineness of the Claimant's sickness; (2) the Carrier could have had the Claimant examined by its own physician under the text of Memorandum No. 2; and (3) the Claimant was confronted with the impossibility of furnishing a doctor's certificate, because she had not seen a doctor, but that not seeing a doctor does not in itself mean that the sickness was feigned.

We do not believe that the applicable text requires the Carrier to give the basis for its doubt about the genuineness of an employee's illness; however, it is noteworthy that, while this claim was still on the property, the Carrier informed the Acting General Chairman that the Claimant's absences due to sickness had amounted to ten days each year from 1964 through 1970. (Ten days is the maximum allowed under Memorandum No. 2.) We likewise find nothing in the applicable text to indicate that the Carrier is obligated to have a sick leave applicant examined by a Carrier physician. Such an examination is the Carrier's right under the text; however, the use of the term "preferably" in the text does not convert such right into an affirmative obligation. With regard to the Employee's third point, we recognize the impossibility of furnishing a doctor's certificate where a doctor has not been consulted. We also recognize that the failure to see a doctor does not in itself mean that a sickness is feigned. Nonetheless, the text of paragraph (H) of Memorandum No. 2 puts the employee on notice that, in the event the genuineness of a claimed sickness is challenged, the likelihood is that he will be asked to produce a doctor's certificate as proof of his sickness. Consequently, when, as here, a doctor's certificate is not available, the employee has the burden to offer other convincing evidence to establish his right to receive sick leave payments. The Claimant offered to meet that burden by showing that she had called in sick on November 9 and by submitting a written statement that she had been sick for two days. Thus, the Claimant, herself, was the sole source of her evidence of sickness. The Carrier rejected such evidence as insufficient and, on the whole record, it cannot be said that the Carrier's determination in this regard was so unreasonable as to be arbitrary or capricious. We shall 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 Employes 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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A.W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 27th day of September 1974.