NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 20691
THIRD DIVISION Docket Number CL-20684

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes
(Burlington Northern Inc.

STATEMENT OF CLAIM: Claim of the Burlington Northern System Board of Adjustment (GL-7557) that:

1. Carrier violated the Working Agreement, with an effective date of March 3, 1970, at Superior, Wisconsin, on March 8 and 9, 1973, and April 16, 17, 18, 19, and 20, 1973, when it refused to allow Mr. W. E. Sewall, Truck and Tractor Operator, sick leave payments as provided for in the Agreement.

2. Carrier shall now be required to make proper sick leave payments for each of the dates named in the claim.

OPINION OF BOARD: Claimant was off from his regular assignment as a Truck and Tractor Operator from March 8, 1973 through April 20, 1973. Claimant had himself admitted to a hospital on March 8, 1973 for the treatment of alcoholism; he was released on April 19, 1973. Claimant took five weeks of vacation, from March 13, 1973 through April 13, 1973 and claimed seven days of sickness benefits (as indicated in the Claim above). Carrier denied the time claim for sick benefits.

The pertinent portions of the Sick Leave Rule provide:

"Rule 55. SICK LEAVE

A. There is hereby established a non-governmental plan for sickness allowances supplemental to the sick benefit provisions of the Railroad Unemployment Insurance Act as now or hereafter amended. It is the purpose of this plan to supplement benefits payable under the sickness benefit provisions of the Railroad Unemployment Insurance Act to the extent provided in this rule and not to replace or duplicate them.

B. Subject to the conditions hereinafter set forth, supplemental sickness benefits will be paid on a daily basis to an eligible employe who is absent from work due to a bona fide case of sickness (not including pregnancy).

"The daily benefit amount of the supplemental sickness benefit will be paid on the basis of one day's benefit for each day of sickness (but only for days on which the employe has a right to work) with a maximum of five days' benefit payable in any calendar week during a period beginning on the first date an employe is absent from work due to illness and extending in each instance for the length of time determined and limited by the following schedule:

Length of Service	Period of Payment Per Calendar Year	Percent of Daily Rate
Less than 3 calendar years	0 Benefit Days	0
3 to 5 calendar years	5 " "	70%
5 to 10 " "	10 " "	75%
10 to 20 " "	15 " "	80%
20 calendar years & over	20 " "	80%

C. For any day for which an employe is entitled to supplemental sickness benefits under the foregoing paragraph of this rule and such days of sickness are not days for which benefits are payable under the Railroad Unemployment Insurance Act, supplemental sickness benefits will be payable to such employe in such amounts equal to the daily benefit amount established in paragraph B.

D. For any day for which an employe is entitled to supplemental sickness benefits under the foregoing paragraphs of this rule and such days are also days for which sickness benefits are payable under the Railroad Unemployment Insurance Act, supplemental sickness benefits will be payable to such employe in such amounts so that such supplemental benefits in connection with the benefits from the Unemployment Insurance Act shall total the daily benefit amount established in paragraph (B) above.

* * * * *

F. 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 also forfeit any company paid supplemental benefits due for that day.

* * * * *

"I. No payments shall be made under this rule unless the employe's supervisor is satisfied that the sickness is bona fide and of sufficient severity to require an absence from work. Satisfactory evidence as to sickness in the form of a certificate from a reputable physician will be required in case of doubt."

Petitioner contends that Claimant was entitled to the supplemental sickness benefits under the provisions of Rule 55 C. It is argued that the only specific exclusion from a "bona fide case of sickness" is pregnancy, as provided in paragraph "B" above. The Organization further states that Carrier had applied sickness benefits on three prior occasions when employees were sick because of alcoholism (evidence in support of these instances was not provided to Carrier on the property although the incidents were referred to and employes named by the Petitioner). It is also argued that other Agreements specifically exclude alcoholism from the coverage of the sick leave rule, while this Agreement does not contain such exclusion. As an example, Petitioner cites Rule 55 E of the Agreement between the Carrier and the Transportation-Communication Division of the Organization, which provides, inter alia:

"The benefit provisions of this agreement apply to non-occupational injury or bona fide sickness of organic origin and of sufficient severity to disable the employe, provided that such non-occupational injury or sickness was not caused by the use of drugs or intoxicants, recklessness, gross negligence or any act contrary to law....."

Petitioner contends that there is no evidence in the record that Claimant's supervisor questioned whether the sickness was bona fide and of sufficient severity to require absence from work; Claimant's hospital bill, indicated that he was confined and under doctor's care during the time in question. Recognizing that the Claim had been denied on the basis that alcoholism is not a bona fide reason for claiming sick benefits, Petitioner cited several authorities to the effect that alcoholism is a disease.

Carrier objects to the injection of the three prior incidents as an indication of past practice by this Carrier in paying employes sick benefits while they are undergoing treatment for alcoholism. Carrier states that this Board has consistently rejected contentions that local payments, such as those herein, have any precedental value (Awards 16053, 16544, 16677 and 18064 are cited). Carrier states that nothing in Rule 55 "provides sick benefits to an employe who absents himself from work to undergo treatment for alcoholism". Carrier argues that under Rule 55 two conditions must be met to qualify an employe for sick benefits: the sickness must be bona fide and disabling (of

sufficient severity to require an absence from work). Carrier claims that neither of these conditions was present in the instant dispute. Carrier contends that in lay terms, such as those used by the parties in negotiating the Agreement in this dispute, alcoholism is not a sickness and has not been recognized as an illness in the industry. Carrier contends that the claim in this case is designed to reward an alcoholic for violating Rule G by affording sick benefits while he is drying out, which was clearly not contemplated when the Rule was drafted. Carrying the logic further, Carrier argues that the Organization's position would result in an employee charged with drinking (Rule G violation) being able to argue that he was sick and hence should not be dismissed but rather should be placed on leave and given sick benefits under Rule 55. Finally, Carrier points out that Claimant prior to March 8, 1973 did not suffer from an illness of such severity as to require an absence from work; Carrier finds that there was no indication in Claimant's prior record to show any problems with respect to drinking.

We concur with Carrier's reasoning with respect to the prior incidents raised by Petitioner; such payments do not constitute a precedent, as this Board has held in many prior disputes.

The issue before us is simply whether or not Claimant's absence due to treatment for alcoholism is covered by Rule 55. First it should be noted that there is no Rule "G" allegation or direct application in this dispute. Furthermore the claim herein has no relation to absence due to drinking, per se, much less with any alleged violation of Rule G. Carrier, in its arguments noted that Petitioner never presented a statement from any doctor indicating that Claimant was sick and could not perform his duties on any of the Claim dates. It is noted, however, that paragraph I of Rule 55 provides that "satisfactory evidence as to sickness in the form of a certificate from a reputable physician will be required in cases of doubt". There is no indication that Carrier through any of its officers "required" any such certificate at any time.

Carrier raises the issue of whether or not the sickness was of sufficient severity to require an absence from work. Carrier asserts that Claimant did in fact work up to the day he entered the hospital, in a normal manner; his "illness", according to the Carrier, therefore did not incapacitate him. We wonder how surgery to correct an eye condition, such as a cataract, and the absence caused by the surgery, would be treated, recognizing that there was no prior work absence. Similarly, corrective surgery or therapy for many conditions which are not obviously incapacitating, may well cause significant absences which are probably covered by the sick benefit provisions of the Agreement, under any reasonable construction. The point is that the treatment of the disease or illness, which is bona fide, may require absence from work, even though the sickness may not in itself have caused

absence. For this reason we do not hold that the lack of prior absence for the alleged "sickness" is controlling. It is quite clear that hospitalization under recognized medical treatment for a substantial period of time is evidence of an illness of "sufficient severity to require an absence from work".

The key to this dispute is in the language of the rule itself. As contrasted with other sick benefit rules, in other agreements, this rule does not exclude mental illness, narcotic addiction, or alcoholism, from payment of sick benefits, but excludes only pregnancy. This Board has no authority to create new exceptions; we can only construe the language as developed by the parties. We must conclude then, that alcoholism per se is not excluded from coverage of Rule 55. The illness, and we view alcoholism as an illness, must however conform to the other criteria of the rule. The particular circumstances must fall within the language and intent of paragraph I: it must be of sufficient severity to require an absence from work and of course a doctor's certificate may be required if the Carrier should so desire. It must be made absolutely clear, however, that we are not suggesting that excessive drinking may be rewarded by sick benefits, but rather we are stating that the treatment of alcoholism may require absence from work and be protected by Rule 55. Each case must be evaluated on its own facts and merits, however and obviously not all treatment requires absence. For example, attending meetings of Alcoholics Anonymous or being treated by a psychiatrist probably do not require absence from work, and certainly under those circumstances no benefits would be applicable. We conclude, therefore, that under the circumstances of this particular case, the Claim must be 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 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 violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A.W. Paulus
Executive Secretary

Dated at Chicago, Illinois, this 17th day of April 1975.