

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20758

Docket Number SG-20407

Dana E. Eischen, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(The Long Island Rail Road Company

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Long Island Rail Road;

On behalf of B. B. Coben for one day's wages as sick pay for November 29, 1971.

OPINION OF BOARD: The instant claim seeks payment for one day's wages under an Agreement dated March 15, 1968, the so-called "Sick Leave Agreement" between Carrier and the Organization. That Agreement reads, in part pertinent to this claim, as follows:

"SECTION 10 - The burden of establishing that he was actually unfit for work on account of illness shall be upon the employee. Every application for sick leave, whether with or without pay, for more than two consecutive days, must be accompanied by medical proof satisfactory to the Carrier and upon a form to be furnished by the Carrier, setting forth the nature of the employee's illness and certifying that by reason of such illness the employee was unable to perform his duties for the period of the absence. This section will not in any way relieve the employee from complying with Sections 12 and 13 of this agreement. This will not supersede any of the applicable agreements."

The facts of the dispute are not contested. Claimant Bruce B. Coben, Signalman was scheduled to report for duty at 8:00 a.m. on Monday, November 29, 1971 at Jamaica, New York. At approximately 6:00 a.m. Claimant telephoned Carrier from Blakeslee, Pennsylvania a point some 140 miles from Jamaica and reported that he was ill and could not report for work that day. Claimant subsequently filed a formal claim for sick pay for that day, which Carrier denied on December 7, 1971 for "failure to comply with Section 10 of the current Sick Benefit Agreement."

The Organization contends that Carrier's denial violates the Agreement and that Claimant is not required to furnish proof other than his personal statement for one day's sick leave. Carrier insists that the employee has the burden of proof on sick claims under Section 10 and that in the particular circumstances of this case, including the logistics and Claimant's sick leave use record, that burden is not met by Claimant's unsupported personal statement of illness.

Review of the record shows that language identical to that quoted supra was the crux of Award No. 8 of Special Board of Adjustment No. 744 in a dispute between this Carrier and another Organization in 1971. The issue presented in that case was framed as follows:

"May Carrier require medical proof of illness other than those which required the employee to be absent for more than two consecutive days?"

We find the principles enunciated in that unanimous Opinion and Award to be applicable herein and quote therefrom as follows:

* * * * *

"What then, of Carrier's contention that it may require medical proof of any absence under Section 10's first sentence? Section 1, it may be recalled, obligates the Carrier to compensate an employee who is 'unfit for work on account of illness or disability...' The Agreement, however, places upon the employee who requests a sick leave allowance 'the burden of establishing that he was actually unfit for work on account of illness.'

"How is this burden to be fulfilled? In the case of absences for more than two consecutive days, satisfactory medical proof is required. With respect to shorter absences the Agreement is silent. Had the parties intended that medical proof would be required for every one or two-day absence they would have so provided. The absence of such provision in the Agreement must be interpreted as a mutual recognition that, generally speaking, medical proof will not be required in such cases. In other words, an employee will normally be deemed to have satisfied his burden if he affirms, in his application for sick leave pay, that he was indeed ill."

* * * * *

"...Where there is a pattern of one or two day alleged illnesses which provides reasonable grounds for suspicion, the employee's Section 10 burden increases, in our judgment. Certainly, it was not the parties' intent to allow an employee to take off at will. To give meaning to Section 10's first sentence when there exists reasonable grounds for believing that sick leave privileges are being abused, it is necessary to uphold the Carrier's right to request that medical proof be presented. Otherwise, any employee would have carte blanche to be absent and receive sick leave pay without fulfilling any burden of proof whatsoever, and Section 10's obligation would become meaningless." (Emphasis added.)

* * * * *

"This is not to say that the Carrier may indiscriminately call for medical proof. It must have a reasonable basis for making such request - or for denying a sick leave allowance in the absence of the requested proof. Section 14, additionally, provides the avenue for disciplining an employee who submits a fraudulent claim or otherwise violates the rules. Each case, of course, will have to be treated individually, and, the reasonableness of Management's determination, in any given situation, that medical proof be submitted, would be subject to challenge in the grievance procedure. What we hold here, simply, is that the Carrier is not barred, under certain circumstances, from requesting medical proof of claimed illness of one or two days.

AWARD

1. For the purpose of applying the second sentence of Section 10 of the August 15, 1968 Sick Leave Agreement, a Friday-Monday absence shall be deemed an absence of more than two consecutive days, as shall an absence on both the day before and the day after a holiday. Single day absences on Monday, on Friday, on the day before or on the day after a holiday, cannot be used to establish the existence of an absence of more than two consecutive days.
2. The Carrier is not barred, under certain circumstances, from requesting medical proof covering an absence of less than three consecutive days, in accordance with the general findings set forth in the Opinion."

We concur that Carrier is not barred under certain circumstances from requesting medical proof covering an absence of less than two days under the Signalmen's Agreement here under construction. Carrier must have a reasonable basis for making such a request - or for denying a sick leave allowance in the absence of requested proof. Each case must be treated individually and stand or fall on its own particular facts and circumstances.

With the foregoing principles in mind we have reviewed carefully the facts herein. Claimant was 140 miles away from his assignment when he called in two hours before starting time on a Monday. Moreover Claimant's record of sick leave use shows that, with relief days Saturday and Sunday, one-third of his illnesses have occurred on a Monday. The latter point may not be sufficient standing alone but when coupled with the logistics and timing of the sick leave call this particular case becomes one in which Carrier has a reasonable basis for requesting additional proof for a one-day absence. This does not mean Claimant was filing a false claim but rather that in the facts of this case he had the burden of providing the requested proof and his failure to do so is fatal to his 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:

A. W. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 18th day of July 1975.