NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20871
Docket Number SG-20678

William M. Edgett, Referee

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

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

On behalf of Robert Ingargiola for sick leave pay that he was denied during the period November 30, 1972, to January 19, 1973.

/Carrier File: Case No. SG-7-737

OPINION OF BOARD: Claimant was injured on the job on November 21, 1972. He was disabled by that injury until January 22, 1973. On November 30, 1972 Carrier's operations were shut down by a strike. The Organization representing Claimant was not a party to the strike, but Claimant's job, and that of all other members of the Organization, was abolished during the period of the strike. After the job abolishment Carrier stopped the payment of Claimant's sick pay.

Carrier takes the position that "there was no work for Claimant as a result of his job being abolished, therefore, he was entitled to no pay (or benefits)." Carrier looks primarily to Section 6 of the Agreement which states that the sick leave allowance "shall be the same as if he had worked in accordance with his regular assignment for that particular day." Since Claimant's assignment was abolished, Carrier reasons that he was not entitled to sick leave under the governing language. In addition, Carrier asserts that practice supports its interpretation of the Agreement. However the record contains no evidence to support the asserted practice.

The Agreement providing for sick leave is long and detailed. None of its twenty four sections specifically covers the case now before the Board. Section 8 does deal with non-allowance of sick leave. Abolishment of a job after commencement of sick leave is not included among the reasons for non-allowance.

We have neither practice nor language directed to the issue to assist in resolving the problem. The fact that the abolishment was the result of a strike by other Organizations is irrelevant. The question is whether a job abolishment subsequent to the commencement of a period of sick leave has the effect of terminating the sick leave. We are not persuaded that it does.

If the parties had wished to achieve that result they could be expected to have said so. The Agreement is detailed, and yet no mention of job abolishment is found in it. If the practice, and thus the mutual understanding

of the parties, supports Carrier's position the record should contain evidence of it. Sick leave is payable under the Agreement only during a period of total disability. The Agreement contains specific provisions which make it a Claimant's responsibility to furnish proof that he cannot work due to a covered condition. It can be argued, therefore, that the current status of his position is not of prime importance for he could not occupy it in any event. In the present situation his opportunity differed from others in his class because he was unable to seek other employment due to his disability.

In Section 1 the Agreement states, "the Carrier will grant to every employee. . . sick leave allowance on each working day when he is unfit for work on account of illness or disability . . ." As previously noted, Section 8 of the Agreement provides exceptions to the grant. In neither place is any intention to terminate sick leave because of subsequent job related developments found.

Carrier relies heavily upon Section 6 which reads:

> SECTION 6 - For any day on which sick leave allowance is granted to an employe, the allowance to be granted him shall be the same as if he had worked in accordance with his regular assignment for that particular day, as such assignment stood at the time of the commencement of his illness, but the term "regular assignment" shall not be deemed to include any overtime work excepting programmed overtime included in the bulletined assignment.

Section 6 is concerned with the amount of the sick leave payment. It cannot be read so closely that its meaning becomes what Carrier ascribes to it. Anyone who wished to exclude persons whose jobs are abolished from the coverage of the Agreement would choose language directed to the point. They would not leave that intention to be derived from a provision placed in the Agreement for another purpose.

Claimant met the requirements set forth in the Agreement for entitlement to sick leave. He had the necessary service with Carrier. He was disabled, and his disability was one of those for which sick leave is payable. The subsequent abolishment of his position due to a strike of other crafts did not terminate his entitlement to sick leave. 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. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 26th day of November 1975.