

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21865
Docket Number CL-21656

James F. Searce, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
(
(Consolidated Rail Corporation
(Former Lehigh Valley Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood,
GL-8109, that:

(a) Carrier violated the May 1, 1955 Rules Agreement between the parties when it refused to pay Clerk Herbert F. McKellin the Funeral Leave allowance prescribed by Rule 60 (d) of said Agreement when he was absent during the period November 14 through 19, 1974, because of the death and funeral of his mother-in-law.

(b) Carrier now be required to pay Claimant McKellin three days pay at the applicable pro rata rate of the position to which he was regularly assigned prior and subsequent to the dates of said absence.

OPINION OF BOARD: This case involves interpretation of Rule 60 (d) of the parties' agreement of May 1, 1955, reading:

"Employees absent on account of death in family
- maximum of three working days; same to be
included in sick allowance granted for length
of service.

NOTE: Maximum allowance referred to in the
above paragraph applies to immediate family
only."

The claim resulted from the Carrier's decision to limit the term "immediate family" to include only "wife, children, father, mother, brother, or sister," as written into agreements with other crafts of employees subsequent to the agreement here involved.

When Claimant was absent November 14 through 19, 1974, due to death of his mother-in-law on November 15, 1974, his claim for payment of the maximum under the above rule was denied, with Carrier taking the position that "in-laws are not considered members of the immediate family."

Affidavits from employees attesting to their understanding that fathers-in-law and mothers-in-law were included within the term "immediate family" and that Carrier had so considered and paid similar claims since the agreement was adopted were presented on the property and such proof was not overcome by Carrier. Carrier merely asserted that the payments were in error and that agreements with other employees wherein restrictive language was written into the rules should apply to clerks also.

In the resolution of this case, Carrier's agreement with other employees does not alter the interpretation or application of the Clerks' agreement. Here the preponderance of evidence supports the claim of the Employees that mothers-in-law have been considered within the term "immediate family."

Claim sustained for the maximum of three working days as provided in Rule 60(d).

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

The Agreement was violated.

A W A R D

Claim sustained per opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulsen
Executive Secretary

Dated at Chicago, Illinois, this 31st day of January 1978.