NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 21953
THIRD DIVISION Docket Number CL-21625

George S. Roukis, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes
(Robert W. Blanchette, Richard C. Bond and John H. McArthur, Trustees of the Property of Penn Central Transportation Company, Debtor

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood, GL-8140, that:

(a) Claim is filed in behalf of Claimant C. Davis account the Carrier violated the Rules Agreement, effective February 1, 1968, particularly Rule 4-I-1(g) and others, when the Carrier arbitrarily deducted from Claimant's pay $12.70 for the first 7 days in the 14 day period for 2 days, being February 16 and 17, 1974.

(b) It is our opinion the seven qualifying days of illness during the fourteen day period, cannot be considered as days for which an employee received the daily compensation under the Railroad Unemployment Act. Therefore, all such daily allowances received must be credited to the remaining calendar days of illness in the fourteen day period. Since sick allowance under Rule 4-I-1 is on a daily rate for the employee's work days, carrier can only deduct the daily allowance under Railroad Unemployment against one work day of illness, and the daily allowances received for other than work days (after first seven days of illness), cannot be deducted.

(c) The Carrier now owes Caito Davis 2 days pay at $12.70 per day for this violation.

(d) Claim is presented in accordance with Rule 7-B-1 and should be allowed.

OPINION OF BOARD: Careful reading of Rule 4-I-1 provides that employes will receive sick leave allowances not to exceed a day's pay at the person's established rate for time absent due to illness. The number of allowable days permitted in any given year is governed by the methodological determinants delineated in paragraphs (a) and (d) respectively of the aforesaid rule.

Pursuant to these provisions claimant had accumulated eighteen (18) compensable days which carrier strictly observed by its consistent pro rata payments of sick leave allowances on workdays, i.e., Monday through Friday except for Washington's Birthday on February 18, 1975. Claimant was not provided sick leave allowances on Saturdays and Sundays, his normal relief days, during this time.

Moreover, under Rule 4-I-1(g) whose application and interpretation is at issue in this dispute, any sick leave allowance paid by the carrier would be reduced in amount by the maximum daily allowance permitted claimant under the statutory entitlements of the Railroad Unemployment Insurance Act hereinafter referred to as the R.U.I.A.

While both Rule 4-I-1(g) and the pertinent provisions of the R.U.I.A. are distinguishable, they do nevertheless share a symbiotic relationship by virtue of the compensatory offset permitted by paragraph (g). The applicable section of the R.U.I.A. code, to wit: title 45 U.S. Code Section 352 (a) stipulates that benefits are payable for each day of sickness, only after the employe has been ill for seven (7) days during the first registration period within a benefit year and only when he has been ill for four (4) days during the second registration period. The provision, hence, speaks to seven (7) and four (4) calendar days of sickness, not workdays and by definition doesn't provide payment exclusively on workdays like paragraph (g).

Carrier has strongly asserted that R.U.I.A. benefits paid on rest days must be factored into the compensable offset allowance. It argues that the September 4, 1970 letter from Vice President-Administration J. J. Maher to International Brotherhood President C. L. Dennis disposed of this question and established thereby a compelling pattern of past practice that was institutionalized de facto.

We feel, however, that probative evidence of a more persuasive kind should have been adduced, documenting by reference to concrete fiscal practices that the parties accepted the Maher interpretation of the Rule 4-I-1(g) and the R.U.I.A. compensatory synchronization. Therefore, absent documentary evidence verifying in fact claimed past practice, we must of necessity examine this question practically de novo. Since the last sentence of paragraph (g) requires the computation of such supplemental allowances only during the period when an employe is accorded sick leave allowances, Rule 4-I-1 (supra), we must note that this period occurs only during the employe's regular workweek, which in this case runs from Monday to Friday. The employe is not accorded sick leave allowances on his rest

days. The R.U.I.A. benefit formula on the other hand, is not designed to offset sick leave allowances during the first seven (7) sick days of the first registration period or the first four (4) days of illness during the second registration period. It provides for measured compensatory adjustments only after the above time periods have elapsed and only during the period when sick leave allowances are provided. As such it is not totally a make-whole benefit.

Similarly, while we are not giving precedential weight to the Santa Fe construction of these provisions which essentially is on point with our analysis,we do take judicial notice of its existence.

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

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 15th day of March 1978.