

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21979  
Docket Number CL-21618

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE:

(Brotherhood of Railway, Airline and  
( Steamship Clerks, Freight Handlers,  
( Express and Station Employees  
(  
(Portland Terminal Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood  
(GL-8177) that:

1. Carrier violated the provisions of the Schedule Agreement between the parties when it failed to compensate Ms. V. McKechnie, Relief Clerk, Portland Oregon, sick leave allowance for January 9 and 10, 1975.

2. Carrier shall now compensate Ms. V. McKechnie two days' sick leave allowance for January 9 and 10, 1975.

OPINION OF BOARD: At the outset, Carrier raises the argument that this dispute should properly be referred to Special Board of Adjustment 605 since it involves the application of the February 7, 1965 Agreement. An examination of the record of this dispute makes it evident to us that this claim does not turn upon the application of the February 7, 1965 Agreement, but rather relates directly to the provisions of the schedule agreement. Even though Claimant was a protected employee at the time the claim arose, and was receiving compensation at her protected rate under the February 7, 1965 Agreement, the dispute herein concerns the application of the sick leave allowance of Rule 48 of the parties' agreement and is properly before this Board. See Award 18385 and Awards 105 and 314 of Special Board of Adjustment 605.

With respect to the merits, Claimant had been displaced from her regular assignment December 19, 1974. Two days later she exercised her seniority and displaced a junior employee and began qualifying on Relief Position No. 521; she was paid her protected rate during this period. On January 9th and 10th, 1975, two of the assigned workdays of Position 521, she reported off sick and claimed sick pay under the provision of Rule 48 of the applicable agreement. That rule provides:

"SICK-LEAVE ALLOWANCE

Rule 48:

(a) Employees who on January 1st of each year have been in service one year or more will be allowed Sick Leave with pay as follows:

1. One (1) year and less than two (2) years-- five (5) working days.
2. Two (2) years and less than three (3) years-- seven and one-half (7½) working days.
3. Three (3) years and over--ten (10) working days.

(b) Employees who are off account sickness in excess of the specified allowance in any year, will be given additional time off with pay to the extent of their unused sick leave allowance in the previous year.

(c) The employing officer must be satisfied that the illness is bona fide. Satisfactory evidence in the form of a certificate from a reputable physician, preferably a Company physician, will be required in case of doubt. The Local and General Chairman will cooperate with the Official when doubt exists.

(d) In the application of this rule, it is understood that where there is no necessity for a position to be kept up daily, it may be blanked, or the duties assigned to the remaining employees in the department. No overtime, Sunday, or holiday work will be required of the remaining employees by reason of the granting of the sick leave.

(e) The above limits of sick leave may be extended in individual meritorious cases, but such extensions will only be made by agreement between the representatives of the Carrier and of the employee."

Carrier denied Claimant's sick claim based on the following:

"The two days sick leave claimed during your student period was at a time when you were being paid as a student to learn new work in connection with the February, 1965, Clerks Agreement. This agreement has

"no provision for compensation at times other than when you are able to work, and claims for sick leave are therefore excluded under the concept of the Agreement."

Under all the circumstances herein, we find that Carrier's denial of sick leave payment, on the basis stated above, was improper. Sick leave is paid or not paid under the terms and provisions of the sick leave rule of the Agreement. The compensation and other provisions of the February 7, 1965 Agreement are not controlling. Rule 48 does not bar sick leave payments when an employee is receiving compensation as a protected employee nor does it bar payments when an employee is breaking in on a job under the provisions of Rule 8. For those reasons the Claim must be sustained. 3

Some eleven months after the claim had been initiated, Carrier raised an additional defense with respect to paragraph (c) of Rule 48 concerning a certificate from a reputable physician attesting to the bona fide illness of Claimant. Proof of illness and satisfactory evidence are proper considerations when doubt exists over eligibility for sick pay. However, questions arising under the application of Rule 48 (c) must be timely raised. Demanding the evidence specified in the rule for the first time eleven months after the claim for sick benefits has been filed seems quite tardy, particularly since Carrier's original position was not that it doubted that Claimant was sick but that it questioned her entitlement to the benefit under the provisions of the February 7, 1965 Agreement. 4

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 violated.

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Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: A. W. Pauls  
Executive Secretary

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

