

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22035
Docket Number CL-21793

Herbert L. Marx, Jr., 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-8172) that:

(a) Carrier violated the Rules Agreement, effective May 1, 1955, particularly Rule 60 thereof, when it refused to compensate Clerk Walter L. Boyle for the date of Saturday, December 21, 1974, when he was absent due to personal illness.

(b) Carrier now be required to allow Clerk Walter L. Boyle one minimum date at the applicable pro-rata rate of his assigned position for the date of December 21, 1974.

OPINION OF BOARD: Claimant did not report for work on December 21, 1974, and subsequently filed claim for one day's pay for his absence, which he stated was due to illness, under the terms of Rule 60 which provides as follows:

"Sick Leave

Group 1 employees who have been in the service one year or more will be allowed sick leave (includes absence due to injury in cases of non-liability on the part of the Company) with pay as follows:

"(a) One year and less than three years service - maximum of five (5) working days in any calendar year.

(b) Employees with three years and less than five years service - maximum of seven and one-half (7 1/2) working days in any calendar year.

"(c) Employees with five years and more service - maximum of twelve and one-half (12 1/2) working days in any calendar year.

(d) 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.

(e) The employing officer must be satisfied that the sickness was bonafide. Satisfactory evidence as to sickness in the form of a certificate from a reputable physician may be required in case of absence exceeding 4 days.

(f) Requests for allowances under the provisions of this rule shall be presented by the employees to the Management with copy to the Representative."

The Trainmaster, Claimant's supervisor, denied the sick leave pay in a letter dated December 24, 1976, stating:

"Referring to your request for one (1) day sick allowance December 21st, due to intestinal virus.

Your claim for one (1) day sick allowance, December 21st, is denied, due to the fact that you have set a precedent claiming sick allowance the day or days after your regular relief days."

The record shows that the Claimant was on his relief days on the two days preceding December 21, 1974. The record also shows that on two previous instances in 1974, the Claimant had requested and received sick leave pay on a day or days immediately following his relief days.

Rule 60 provides that "satisfactory evidence" from a physician "may be required" by the Carrier in cases of absence exceeding four days. The rule does not, however, simply grant employees the right to claim and receive sick leave for absence of four days or less on the mere statement of illness. The Rule includes the limitation that, "the employing officer must be satisfied that the sickness was bonafide." This appears to mean that the Carrier may either request some type of verification of short-term illness absence (which might include any type of substantiation of evidence of illness, perhaps simply through an interview with the employee); and it could also include independent investigation by the Carrier.) But these considerations are not pertinent here. In this instance, the Carrier's supervisor simply denied the claim for sick leave based on what he considered a "precedent." This same argument was followed in subsequent denials of the claim through the appeal procedure. There is no record that the Carrier ever requested verification of the reason of absence in any way. The "precedent" apparently was enough for the Carrier.

It is not enough for the Board. Two previous occurrences of illness of one or two days' duration over the course of a year, both of which were immediately following relief days, could well be coincidence. Given a five-day work week with two relief days, there is a 40 per cent mathematical possibility that any sick day will occur contiguous with a relief day. The Carrier's suspicion may have been aroused by this 40 per cent possibility occurring three times consecutively. But this at most could lead to investigation -- not a presumption that a "precedent" was set.

Clearly, Rule 60 does not permit whimsical claims for sick leave at any time. Equally clearly, the Rule provides that claim for sick leave of four days or less may not be denied on the "hunch" of the Carrier that something is amiss. In this instance, the reason (the only reason) given for denial of sick leave pay was insubstantial.

Award No. 20406 (Blackwell) is not helpful here. In that case, the Agreement language as to a physician's statement carries with it no limitation of illness of more than four days. Further, the Claimant in that case had used her maximum sick leave allowance in each of the previous seven years.

Award No. 20758 (Eischen), also relied upon by the Carrier in its argument, deals with an agreement with quite different requirements in its sick leave provisions and also with quite different circumstances as to the employe's absence.

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 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.

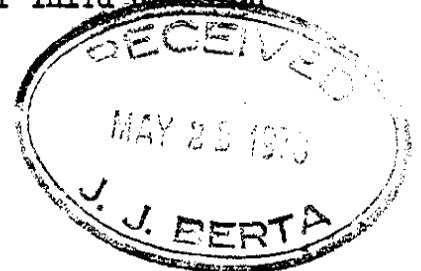
A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary



Dated at Chicago, Illinois, this 28th day of April 1978.