

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22301
Docket Number SG-22108

Robert A. Franden, Referee

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

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

Claim No. SG-39-76

Carrier violated the current Signalmen's agreement when it denied the claimant (Olson) personal leave on June 8th 1976, and June 9th 1976 after he (claimant) notified Carrier of his intended absence at 9:00 A. M., on June 7th 1976.

Carrier should now be required to compensate Signal Maintainer Arthur W. Olson, the difference between his pro-rata rate, which is \$7.9952 per hour and the rate of double time and one-half, which is the penalty rate for being required to work his position at Dunton interlocking, which is \$11.9928 for sixteen (16) hours = \$191.8848 - and additionally for any subsequent days Mr. Olson is denied personal leave. This is to be considered as a continuing claim."

OPINION OF BOARD: This claim was filed when carrier refused to grant claimant personal leave when he requested same on June 8, 1976 and June 9, 1976. The claimant's request for personal leave was based on Rule 70 of the agreement between the parties.

The carrier denied the requested leave because it had previously granted leave to another in the maintenance subdivision on the same tour of duty. It is the policy of the carrier to grant only one leave day on each work day tour per subdivision.

The organization takes the position that the carrier has no discretion in this matter in that the personal leave day is a matter of right subject only to the specific limitations set out in Rule 70.

"RULE 70 -- PERSONAL LEAVE

(a) Subject to the limitations set forth herein Carrier will grant to each regularly assigned employee subject to this Agreement, personal leave without loss of pay, not to exceed three (3) days per calendar year.

(b) Personal leave days, as granted herein, shall be non-consecutive and shall not be taken in conjunction with any of the following:

- (1) Sick Leave
- (2) Holidays
- (3) Vacation
- (4) On days immediately preceding and/or following relief days.

Note: Exception to the above will be made only in case of a required court appearance and/or mortgage closing.

(c) Compensation allowed on personal leave days will be at the straight time hourly rate of the employee's regular assignment.

(d) Application for personal leave on forms provided by Carrier must be filed with the employee's supervisor at least eight (8) hours prior to the time the employee intends to be off.

INTERPRETATION

- (1) It is not the intent of the Carrier that the employee be required to file an application form prior to his absence for personal reasons. The intent of Item (d) is to assure that the employee's supervisor be adequately notified of his intended absence at least eight hours prior to such absence.
- (2) It will be necessary, however, that the employee complete the required form immediately upon his return to duty. Among other things, this will insure that the employee will be compensated in the appropriate pay period."

Rule 70 clearly states that personal leave will be granted subject to the limitations set out in the rule. The carrier's attempting to add a further limitation, to-wit: in accord with its adoption policy. The language of the rule itself along with the interpretation following creates a right in the employee. The carrier has infringed on that right by limiting the time when an employee can take his personal leave beyond those limitations set out in the rule. This is a violation of the agreement. The carrier deprived claimant of a right bargained for and granted under the agreement. He is entitled to be compensated for the loss of that right. The damages prayed for are not unreasonable.

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.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 22nd day of February 1979.