

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22308
Docket Number CL-22334

Don Hamilton, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(
(Chicago and North Western Transportation Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8518) that:

1. Carrier violated the terms of the effective Agreement, particularly Rule 57 (SICK LEAVE - COMPASSIONATE LEAVE) when it failed and/or refused to compensate Mr. H. C. Roberts, regularly assigned clerk at Ravenswood, under the provisions thereof after he had properly laid off sick on January 13, 14 and 15, 1976 and thereafter submitted a doctor's certificate which verified the illness which caused his absence from work on those dates, and;

2. Carrier shall now be required to compensate Mr. H. C. Roberts for four (4) hours on January 13, 1976 and eight (8) hours on each date of January 14 and 15, 1976, in the manner and measure provided for under the provisions of Rule 57 account of its failure to properly comply with the sick leave requirements therein.

OPINION OF BOARD: The Claimant reported for work at 9:30 a.m. January 13, 1976. He was one hour late for his assigned starting time. He had a discussion with his Supervisor concerning his work performance and attendance record. At about 9:45 a.m., the Claimant advised his Supervisor that he wanted to take off starting at 10:00 a.m., and remain off the rest of the work week on vacation. The Supervisor denied his request for vacation because of the volume of work and the lack of adequate notice of his intent. At approximately 10:00 a.m., the Claimant left the Department, advising that he was ill. At approximately 10:30 a.m., the Local Chairman advised the Supervisor that he and the Claimant wanted to discuss the problems between the Claimant and the Supervisor. A discussion followed and the Claimant did not leave the office building until 12:30 p.m.

The Claimant remained off work January 14 and 15, 1976. His rest days were January 16 and 17, 1976. The Claimant returned to work January 18, 1976.

When the Claimant returned to service, he provided the Company with a statement from a Dr. R. Wright of the University of Illinois Hospital which advised that the Claimant had been seen on January 13, 1976, and "may return to work on January 19, 1976."

The Claimant requested sick pay pursuant to Rule 57, for four hours on January 13, and eight hours for January 14 and 15, 1976. The Carrier denied the claim for sick pay compensation.

Rule 57(c)2 provides:

"No payments shall be made under this rule unless the employe's sickness is bona fide and of sufficient severity to require his absence from work. Satisfactory evidence as to sickness will be required in case of doubt."

The Carrier admits that it does not uniformly require a certificate from a doctor in order for the employe to receive sick leave compensation. The Carrier further admits that if an employe has a good record of attendance and has not abused the sick leave provisions, then usually a certificate from a doctor is not required. In selected instances where the Carrier suspects that the employe is abusing the sick leave provision of the Agreement, the Carrier will require the employe to provide a certificate from a doctor in order to substantiate the claim for sick leave compensation. This appears to be a generally accepted practice in the field of industrial relations.

In the instant case, the Carrier had determined that this employe would have to substantiate his sick leave absences with a certificate from a doctor. The Claimant had been so advised.

The Rule says that satisfactory evidence as to sickness will be required in case of doubt. The Rule does not attempt to define the elements or requirements of satisfactory evidence.

The Carrier admits that on this property, satisfactory evidence has taken the form of a certificate from a doctor. No other evidence has been required.

In the instant case, the Carrier simply does not accept the certificate of the doctor and argues that the Claimant just did not want to work on the days in question. The Carrier also rejects the certificate based on the knowledge the Carrier has of the events of January 13, 1976, prior to the time the employee left the office.

The record indicates that there is substantial reason for the Carrier to doubt the illness of the Claimant. However, the record is clear and convincing that the Carrier has always accepted a certificate from a doctor as satisfactory evidence, in compliance with Rule 57. If the Carrier is to require more in certain selected cases, then such policy must be made known to the employees prior to the implementation thereof.

This Claimant had every reason to believe that if he returned to work with a certificate from a doctor, he would be entitled to compensation for sick leave. This record indicates that the Claimant may well have taken advantage of the established practice, but we are unwilling to overrule the only practice on the property in order to make an example of this one employee.

The Rule gives the Carrier the right to require satisfactory evidence of sickness in case of doubt. It does not provide that the Carrier must require such evidence in every instance of absence.

The parties have established an uninterrupted practice in the application of Rule 57. When the Carrier requires satisfactory evidence of sickness, the employee knows that he must submit a certificate from a doctor and the Carrier will accept the certificate as sufficient evidence to remove the doubt.

Certainly, the Rule does not limit the Carrier to this particular action. The Carrier could require other evidence if it so desired.

But in this case, the parties have limited the evidence required by the long-standing practice on the property.

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:

A. W. Pauls
Executive Secretary

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

