

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22550
Docket Number MS-22260

Rolf Valtin, Referee

PARTIES TO DISPUTE: { Kenneth B. Parker
{ Chicago, Milwaukee, St. Paul and Pacific
{ Railroad Company

STATEMENT OF CLAIM: "It is my desire to be awarded one sick days pay under the Rules of Memorandum No. 2 of the Clerks Agreement."

OPINION OF BOARD: At the time here in question, the claimant was a Review Clerk (Position No. 43420) in Seniority District No. 71. His service date is May 4, 1959. His scheduled work-week was Monday through Friday. 8:20 AM was his shift-starting time. He is claiming sick pay for Monday, February 23, 1976 under Memorandum No. 2 of the applicable Agreement.

The Memorandum in part reads as follows:

"Effective July 1, 1975, it is agreed:

(a) Subject to the conditions hereinafter enumerated, regularly assigned employees under this agreement who have been in the continuous service of the Carrier for the period of time as specified, will be granted pay for time absent on account of a bona fide case of sickness as follows:

* * * * *

3. Upon completion of three (3) years of continuous service under this Agreement, a total in the following year of ten (10) working days.

* * * * *

(c) To be entitled to sick leave payment for any day on which he is absent from work because of illness, an employee, except where it is impossible to do so, must at least one hour before the commencement of his scheduled tour of duty for that day, cause notice of the illness and of the place where he can be found during such illness, to be given by telephone, messenger or otherwise, to a designated

"supervisor and must also give notice to such supervisor of any subsequent change in the place where he can be found. Where it is impossible to give such notice within the time above prescribed, it shall be given as soon as circumstances permit. The failure to cause such notice to be given shall deprive the employe of his right to be paid for such scheduled tour of duty... The failure to cause notice to be given as herein provided shall not be excused unless the Carrier is convinced that special circumstances made it impossible..."

It is a conceded fact that the claimant phoned his supervisor at about 8:20 AM -- i.e., that the claimant did not give notice of illness "at least one hour before the commencement of his scheduled tour of duty for that day". The claimant relies on his statement that he awoke at 6:15 AM; that he had a sore throat and felt weak and dizzy, as he had over the weekend; that he woke up his boy to get the boy off to school; that he (the claimant) then returned to his bed; that he therewith either fell asleep or fainted; and that it was 8:15 AM when he re-awakened.

We think we would err were we to overrrule the Carrier's resistance to the claimed sick pay. For one thing, the concluding portion of paragraph (c) of the Memorandum specifically states that "The failure to cause notice to be given as herein provided shall not be excused unless the Carrier is convinced that special circumstances made it impossible" (emphasis supplied). And for another, we do not believe that the Carrier can be taken to task for its lack of conviction that the circumstances were such as to have made it impossible for the claimant to give timely notice. By the claimant's own statement, the realistic assessment is that he was sufficiently awake at 6:15 AM to function and that, rather than either prepare himself to go to work or report off as sick, he went back to bed and overslept.

The claimant argues that he has never before been denied a claim for sick pay. The difficulty with the argument, it seems to us, is that it demonstrates good-faith dealing by the Carrier quite as much as by the claimant.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 not violated.

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Docket Number MS-22260

Page 3

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 28th day of September 1979.