

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22665
Docket Number CL-22182

Dana E. Eischen, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
(
(Southern Pacific Transportation Company
((Pacific Lines)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8398) that:

"(a) The Southern Pacific Transportation Company violated the current Clerks' Agreement, Rule 66 thereof, when it failed and refused to compensate Mr. E. L. Hepner in accordance with its terms; and,

(b) The Southern Pacific Transportation Company shall now be required to allow Mr. E. L. Hepner eight (8) hours' compensation at the rate of Crew Dispatcher Position No. 307 each date January 2, 5, 6, 7, 8, 9, 12, 13, 14 and 15, 1976."

OPINION OF BOARD: Claimant was employed on dates of claim as Crew Dispatcher and had worked for Carrier for 27 years. On December 24, 1975 Claimant walked off his position and he subsequently was terminated on January 26, 1976 following notice and investigation. The sole and only question presented in this case, however, is whether Carrier violated Rule 66 in denying Claimant's sick leave requests on the claim dates above. Rule 66 reads as follows:

"SICK LEAVE

An Employee who is in active service in the calendar year on the day that the sickness occurs (an employee who was allowed sick pay for his last work day in December of the previous calendar year or an employee who performed sufficient service in preceding calendar year to qualify for vacation will be considered in Active Service January 1 of the following calendar year) and who has been in continuous service of the carrier one year and less than two years, will not have

"deduction made from his pay for time absent on account of a bona fide case of sickness until he has been absent five (5) working days in the calendar year; an employee who has been in continuous service for two years and less than three years, seven and one-half (7 1/2) working days; an employee who has been in continuous service three years or longer, ten (10) working days. Deductions will be made beyond the time allowance specified above, except that unused sick time days may be accumulated from one calendar year to the following calendar year up to a maximum of ten (10) days. For example: An employee entitled to 10 days sick time in the year 1971 is paid for only 5 days sick time. In 1972, he would be entitled to 10 days sick time plus 5 days' accumulation. If this employee is allowed sick pay 11 days in 1972, he would be entitled to 10 days plus 4 days' accumulation in 1973.

The employing officer must be satisfied that the sickness is bona fide. Satisfactory evidence as to sickness in the form of a certificate from a reputable physician, preferably a Company physician, will be required in case of doubt."

On his timecard for January 1976 Claimant sought sick time for each of the dates of claim. That request was denied by Superintendent Babers' letter of February 23, 1976 as follows:

".....you must show bonafide proof that you were off sick each date a certificate from a physician will suffice."

It is an unrefuted matter of record that Carrier had no physician in the Eugene, Oregon area. Claimant obtained and submitted to Carrier a certificate from his personal physician reading as follows:

"Everett Hepner has been under my care from 12/30/75 to present and is able to return to work on 1/12/76."

Thereafter, Superintendent Babers continued to deny the claim for sick days, now asserting that the sickness was not bona fide in the circumstances of Claimant's termination.

In the particular circumstances of this case we conclude that Carrier erred in refusing to grant Claimant sick leave payment

for those dates which are referenced in the physician's certificate. To that extent, therefore, Carrier violated Rule 66. We shall sustain the claim for the dates of January 2, 5, 6, 7, 8 and 9, 1976. The claim is denied as to January 12, 13, 14 and 15, 1976 since Claimant's own doctor certified that he was able to return to work on January 12, 1976.

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 to the extent indicated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 14th day of December 1979.