

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22682
Docket Number CL-22798

Martin F. Scheinman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
(
(The River Terminal Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8703) that:

1. The Carrier violated the effective Clerks' Agreement when it failed and refused to allow Clerk Philip Clayman sick leave on January 26 and 27, 1978.

2. The Carrier shall now compensate Mr. Clayman for eight (8) hours' pay at the pro rata rate of his assignment for each of dates January 26 and 27, 1978.

OPINION OF BOARD: On January 30, 1978, claimant presented a "Request For Sickness Allowance" form on which he made claim for sickness allowance benefits for January 26 and 27, 1978. By letter dated March 10, 1978, Carrier requested that claimant present "evidence of your sickness in the form of a certificate from a reputable physician." Claimant furnished a physician's statement on March 28, 1978. By letter dated May 2, 1978, Carrier indicated that it "cannot accept the letter from Dr. Stewart dated March 28, 1978 as satisfactory evidence."

Petitioner's primary argument in this case, both on the property and before our Board, is that claimant is entitled to payment as requested because of Carrier's failure to comply with the time limits mandate.

RULE 32 - Violations - Grievances - Time Limits states:

"(A) All claims or grievances must be presented in writing by or on behalf of the employee involved, to the officer of the Carrier authorized to receive same, within 60 days from the date of the occurrence on which the claim or grievance is based. Should any such claim

"or grievance be disallowed, the carrier shall, within 60 days from the date same is filed, notify whoever filed the claim or grievance (the employee or his representative) in writing of the reasons for disallowance. If not so notified, the claim or grievance shall be allowed as presented, but this shall not be considered as a precedent or waiver of the contentions of the Carrier as to other similar claims or grievances."

Carrier contends that it complied with Rule 32 by requesting from claimant, on March 10, 1978, evidence of his sickness. This request, it contends, "was in writing as required by Rule 32 and the reason for disallowance was given, i.e., Carrier requested evidence of claimant's sickness in form of a certificate from a reputable physician covering the dates claimed in accordance with Paragraph (K) of Rule 53."

This position simply is not tenable.

The language of Rule 32 - Time Limits is clear, unambiguous and mandatory upon all parties subject to it. Carrier's March 10, 1978 letter requesting evidence from a reputable physician was indeed proper under the provisions of paragraph (K) of Rule 53 - Sick Leave; however, it did not rise to the level of a disallowance of the claim initiated on January 30, 1978. This Board's decision in Third Division Award No. 18352 has equal application here. There we said:

"*** Time limitations set by contractual agreement have the same force and effect as those found in statutes and court rules -- a party failing to comply by nonfeasances finds himself hoisted by his own petard."

See also Third Division Award Nos. 20657, 21675, 21873, and 22162. Time limits, legally entered into, are binding in all phases of personal and business life. Such limitations have a mutually protective purpose and their stipulations must be honored or their benefits forfeited.

In view of this time limit violation, we must sustain the claim as presented without reaching the merits of this case.

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

The 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 14th day of December 1979.