

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22778
Docket Number CL-22664

George S. Roukis, Referee

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-8628)
that:

Claim No. 1

1. Carrier violated the Agreement between the parties when on Wednesday, January 5, 1977, it did not allow Key Punch Operator P. P. Gray sick leave allowance as provided in Rule 57 of the current Clerks' Agreement that she had qualified for and had coming to her.

2. As a result of its' violative action, Carrier shall now be required to compensate Key Punch Operator P. P. Gray for eight (8) hours pay based on the rate of \$1,180.87 per month.

Claim No. 2

1. Carrier violated the Agreement between the parties when on Monday, January 10, 1977, and Tuesday, January 11, 1977, it did not allow Experienced Station Accountant Clerk F. G. Erdmann sick leave allowance when he was off sick and unable to work.

2. As a result of its' violative action, Carrier shall now be required to compensate Clerk Erdmann for sixteen (16) hours pay based on the rate of \$1,228.40 per month.

OPINION OF BOARD: The employe organization has joined two separate,
albeit virtually identical claims on behalf of
Claimants in this dispute.

Specifically it contends that Carrier violated Agreement Rule 57 when it denied them sick pay on the days that they were properly off. In one case, Claimant P. P. Gray was off on January 5, 1977, while in the other case, Claimant F. G. Erdmann was off on January 10 and 11, 1977. The organization relies upon paragraphs (a) and (b) of this Rule to support its position.

Carrier, on the other hand, argues that paragraph (c) of Rule 57 is applicable to this dispute since it requires that the employing officer must be satisfied that the absences are due to bona fide sickness. In both cases, it asserts, the absences occurred on snow days and were not followed up with appropriate medical verification, except a note from the respective spouses, about fifteen (15) months later attesting to their illness.

Paragraph C reads:

"The employing officer must be satisfied that the sickness is bona fide. Satisfactory evidence as to sickness may be required in case of doubt."

In our review of the case, we agree with Carrier that Claimants were under a greater obligation to adduce more persuasive proof regarding their claimed illness. A physician's note would have sufficed within the meaning and intent of paragraph (c) to comply with this requirement once the employing officer questioned the absence. Careful reading of this provision reveals that the Carrier official must be satisfied that the illness is bona fide and might require in cases of reasonable doubt, evidentiary verification. The notes submitted by the Claimants' spouses in March 1978 were far too late and self serving and would hardly qualify as compelling probative evidence pursuant to this requirement. Claimants had a timely opportunity to demonstrate that they were sick, but did not do so to their detriment.

Based upon the record, we are constrained to deny the claims, but must point out consistent with our appellate authority, that we don't think the rules permit Carrier to issue a blanket interpretation to the effect that if it snows you can't receive sick pay if you do not show up for work. The claims are denied.

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

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That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 14th day of March 1980.