

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22806
Docket Number CL-22486

Kay McMurray, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
(
(St. Louis-San Francisco Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-8540)
that:

1. Carrier violated the provisions of the Sick Leave Agreement of December 1, 1969, when it failed and refused to allow Mr. C. J. Eifert, agent/telegrapher, at Chaffee, Missouri, sick pay for October 16, 1976.

2. Carrier shall now be required to compensate Mr. C. J. Eifert an additional day's pay at the rate of his regular assigned position at Chaffee, Missouri, for October 16, 1976.

OPINION OF BOARD: Claimant is employed as an agent at Chaffee, Missouri. He was off duty on October 16, 1976, and submitted a claim for sick leave which was denied by the carrier.

The carrier in turning down the claim points out that Mr. Eifert laid off for a doctor's appointment and, in its view, that does not constitute a bona fide case of sickness. The record indicates that claimant first advised on October 8 that he would be off October 11, on account of a doctor's appointment. However, on October 9 he modified that notice. He informed the carrier that he would now be off on the 16th since his doctor's appointment had been changed to that date. Based on the foregoing, the problem does not appear to be serious in terms of time and could raise reasonable doubts with respect to whether or not it constitutes a bona fide illness.

The Organization maintains that the sick leave agreement provides that the carrier should have requested a certificate from a reputable physician if they had doubts regarding a bona fide illness.

The sick leave agreement upon which they both rely reads in pertinent part:

(a) Subject to the conditions enumerated, an employe.... will be granted an allowance not in excess of a day's pay at his established rate for time absent on account of a bona fide case of sickness.

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

The Organization states in its submission that they did very little on the property to establish that the illness was bona fide. It maintains that the sick leave agreement does not place that requirement upon the employes. The Statute and Rules and Procedures of the Board place a responsibility on both parties to fully develop the case on the property and the Organization cannot rely on the agreement to avoid that responsibility.

The claimant is, in effect, asking this Board to interpret the sick leave agreement in a manner which would require the carrier to obtain a statement from a physician before a claim could be denied. We are unable to accommodate that position. The language is simple and explicit.

The word may is permissive in nature, not obligatory, and this Board cannot change the agreement.

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 employes involved in this dispute are respectively Carrier and Employes 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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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 31st day of March 1980.