

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22992
Docket Number CL-22949

Martin F. Scheinman, 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-8819)
that:

1. Carrier violated the terms of the Sick Leave Agreement of December 1, 1969 when on July 10, 1978, it failed and refused to allow clerical employee D. W. Johnston pay for 7.9 hours at the rate of position No. 405.

2. Carrier shall now compensate clerical employee D. W. Johnston for 7.9 hours pay at the rate of position No. 405 for July 10, 1978.

OPINION OF BOARD: Claimant, D. W. Johnston, was regularly assigned to the Rotation Extra Board headquartered in Carrier's General Stores Department in Springfield, Missouri. Rotating Extra Board positions are regularly assigned, except hours of service and work assignments are omitted on the bulletin, and the rate of pay of such positions is the rate applicable to the position on which service is performed.

Incumbent of Rotating Extra Board positions headquartered at the General Stores report to work at 7:30 A.M. to the Foreman who assigns them to the position they are to work unless they have already been assigned to a continuing vacancy. On July 10th, 1978, Claimant reported for work for his regular assigned position No. 405. Claimant was issued an assignment by the Foreman in the Storeroom.

After receiving his assignment, Claimant advised the Foreman that he was ill and unable to protect the assignment. He informed the Foreman that it would be necessary for him to leave the property because of illness.

Upon his return to work, Claimant submitted the appropriate form for claiming sick pay for July 10th, 1978. Claimant's employing officer told Claimant that payment would not be allowed because Carrier was not satisfied that this was a bona fide case of sickness.

The Organization contends that Carrier violated the Section C of the Sick Leave Agreement. It states:

"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."

X-1
In the Organization's view, if Carrier doubted that Claimant was really ill, it could have required him to submit a certificate from a reputable physician. Since Carrier did not avail itself of this method, the Employees insist that Carrier may not challenge Claimant's statement that he was ill.

X-2
Carrier, on the other hand, maintains that it did not violate the Sick Leave Agreement. It argues that a physician's note was not requested because there was no doubt whatsoever on the part of the employing officer that Claimant was not sick.

X-3
A review of the transcript as well as the submissions to this Board convince us that the Organization's argument is more compelling. The claim must be sustained.

X-4
The crux of Carrier's contention here is that the Foreman knew that Claimant was not ill on July 10th, 1978. Therefore, there was no reason to have Claimant submit a physician's certificate.

X-5
Carrier's contention must be rejected. The transcript simply does not establish that the Foreman knew that Claimant was not ill. On the contrary, the evidence indicates that the Foreman led Claimant to believe that his statement he was ill and going home was acceptable. There is nothing to indicate that Claimant's statement that he was ill was questioned by the Foreman. There is no evidence that the Foreman objected to Claimant not covering the assignment or leaving the property. In fact, when Claimant stated that he was ill and going home, Foreman admitted that he responded "O.K."

X-6
Thus, we are persuaded that the Foreman did not challenge the authenticity of Claimant's statements. Stated simply, we are convinced that the Foreman did not know that Claimant was not ill. As such, we will sustain the claim as presented.

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.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 29th day of September 1980.