

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23195
Docket Number CL-22827

George E. Larney, Referee

PARTIES TO DISPUTE:

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(
(Burlington Northern Inc.

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood (GL-8755) that:

1. Carrier violated the effective Agreement of Rules between the parties, Rule 52 thereof in particular, when it refused to pay Mr. M. H. Olafson one (1) day's sick leave allowance for February 24, 1978.

2. Carrier shall now be required to correctly allow payment to Claimant Olafson of 80% at the pro rata rate of his regular position for February 24, 1978.

OPINION OF BOARD:

The facts in the instant case are not in dispute. Claimant, Manfred H. Olafson, assigned as Agent-Telegrapher at Carrier's Lisbon, North Dakota facility, received a letter from his personal physician dated February 15, 1978, apprising Claimant of the results of a physical examination he had undergone on February 7, 1978. In this letter, Claimant's physician advised him, that as a result of tests proving positive for occult blood in his stool specimens, he thought Claimant should come to see him for further tests. This letter reads in pertinent part as follows:

"The three stool specimens were all positive for occult blood. I suspect this may be related to taking the Prednisone. However, I think the only way we can be sure is to do x-rays and I think we should schedule colon and stomach x-rays and do a proctoscopy. I will send you appointments for these things. If you can't keep those appointments, please let me know."

Claimant heeded advice of his physician and on dates of February 22, 23, and 24, 1978, he was absent from his assignment account travelling to the Fargo Clinic in Fargo, North Dakota, located approximately seventy-five (75) miles away from home and remaining in Fargo until the various medical tests were completed. On February 27, 1978, Claimant submitted Form 13052, Employee Leave Claim, specifying the three (3) days spent at the Fargo Clinic as sick days and requesting sick leave benefits for date of February 24, 1978, in accordance with Rule 52 of the Controlling Agreement. In relevant part, Rule 52 reads as follows:

"RULE 52. SICK AND FUNERAL LEAVE

"A. Subject to the conditions enumerated below, employees who have been in the service of the Carrier continually for the period of time herein specified will be allowed sickness benefits on a daily basis when absent from work due to a bonafide case of sickness (not including pregnancy) of such employee:

* * * *

"(4) Upon completion of twenty years or more of continuous service under this Agreement, a total each year of service thereafter of twenty working days.

* * * *

"NOTE B: The daily sickness benefit comprehended by this rule is 80 per cent of the basic daily pro rata rate of the regular position of which the employee is an incumbent. *** In no case shall the benefits prescribed herein be payable for more than five days in any work week.

* * * *

"E. The benefit provisions of this agreement apply to non-occupational injury or bona fide sickness of organic origin and of sufficient severity to disable the employee, provided that such non-occupational injury or sickness was not caused by the use of drugs or intoxicants, recklessness, gross negligence or any act contrary to law. The employing officer must be satisfied that the sickness is bonafide. Satisfactory evidence, preferably in the form of a certificate from a reputable physician, may be required by the employing officer, in case of doubt.

* * * *

"H. No allowance will be made under this rule for the first two working days that an employee is absent account sickness, unless, such absence continues for five continuous working days or longer, nor shall any allowance be made under this rule for any day on which the employee is entitled to compensation under any other rule or agreement. ***"

The Carrier apprised Claimant in a time roll correction notice dated March 6, 1978, that his sick leave claim would not be processed because physicals and x-rays were not compensable under the Sick Leave Rule, Rule 52.

The Organization takes the position that Claimant's physical condition of internal bleeding as detected by the occult blood in his stool specimens was indeed of serious moment, and constituted a condition of "sickness" as that contemplated by the contractual language, "bonafide case of sickness" and "bonafide sickness of organic origin", used in Rule 52 referenced above, Sections A and E respectively. In support of its position, the Organization argues the x-ray tests which were taken on the claim dates in question were not of a routine nature, but rather, they were required to determine whether Claimant had a sickness which would have necessitated immediate attention. In furtherance of this point, the Organization cites a letter dated June 23, 1978 from Claimant's personal physician to the Carrier which reads:

"Mr. Olafson was found to have blood in his stools in February. This is, of course, a very serious matter and that is the reason that he had to have the examinations of the intestinal track both by proctoscopy and x-ray. These studies were done February 22, 23, and 24."

In sum, the Organization submits the following:

1. Claimant did, in fact, have a "bona fide sickness of organic origin";
2. This was a serious sickness of the moment which required immediate attention;
3. Claimant did provide the requisite "satisfactory evidence" to Carrier in the "form of a certificate from a reputable physician"; and
4. Carrier's failure to compensate Claimant 80% of the pro rata rate of his regular position for February 24, 1978 is a violation of the effective Agreement of Rules between the parties, Rule 52 thereof, in particular.

The Carrier takes the position Claimant was not sick within the meaning of that term as used in the language of Rule 52. Carrier argues that nowhere in the handling of this claim has the Organization presented competent evidence supporting its allegation Claimant was sick or prevented from working because of sickness. On the contrary asserts the Carrier, Claimant was prevented from working on the claim date in question not because of his physical condition but rather because of the geographical distance of seventy-five (75) miles between

the Fargo Clinic and his place of work in Lisbon, North Dakota. Carrier further argues that nothing in the language of Rule 52 mandates payment of sick leave benefits to an employee who absents himself from work for the purpose of taking physical examinations and medical tests. In support of this latter point, Carrier notes Section E of Rule 52, reproduced above, applies to non-occupational injury or bona fide sickness of organic origin and of sufficient severity to disable the employee. Thus asserts the Carrier, two (2) conditions must be met in order to receive sick leave benefits: (1) the sickness must be bona fide; and (2) the sickness must be of sufficient severity to require an absence from work. The Carrier argues that in the case at bar neither of these two conditions were in evidence.

In ascertaining the facts before us, associated with the situation in its entirety, it is the Board's determination that this is an instance where upholding the clear and unambiguous meaning of the pertinent contract language of Rule 52 is, in fact, in direct conflict with what can be viewed as an equitable adjustment of the instant dispute. This conclusion is made all the more harsh when consideration is given to Claimant's long service with the Carrier and the fact that Claimant did not, in any manner, attempt to cause an abuse in sick leave policy by submitting the instant claim. Nevertheless, Claimant's physical condition which motivated him to seek further medical tests indeed fails to meet the contractual definition of "sickness" as set forth in the language of Rule 52. Furthermore, we agree with Carrier's position, that the geographical distance between Claimant's work site which was also his place of abode, and the Fargo Clinic was the determinative factor in preventing him from working on the claim dates in question and not his physical condition at the time. Had the Clinic been located in Lisbon rather than Fargo, this Board believes it would have been possible for Claimant to both work and see his physician as his physical condition was not of a debilitating nature preventing him from reporting to work or working. Finally, as it turns out, Claimant's internal bleeding was later attributed to the medication he was then taking and not to any immediate sickness or disease. For all the foregoing reasons, the Board finds we must deny the claim.

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 not violated.

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Paulsen

Executive Secretary

Dated at Chicago, Illinois, this 27th day of February 1981.