NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 23206
THIRD DIVISION Docket Number CL-23185

Rodney E. Dennis, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes
(Southern Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-8902) that:

Carrier violated the Agreement at Cleveland, Tennessee, when it arbitrarily deducted from Mr. W. K. Robinson's pay for the first period of April, 1978, a total of $50.00, representing benefits payable at $25.00 per day as entitlement under the Railroad Unemployment Insurance Act for a period of personal illness that encompassed Claimant's assigned rest days of April 14 and 15, 1978.

Carrier shall now be required to reimburse Claimant W. K. Robinson in the amount of $50.00, representing the full improper deduction from the Claimant's payroll check for the first payroll period of April, 1978.

OPINION OF BOARD: Claimant W. K. Robinson was an operator clerk at Cleveland, Tennessee. His rest days were Friday and Saturday. Claimant was off sick from Sunday, April 9, 1978, to Sunday, April 16, 1978, missing five work days. He was eligible to receive R.U.I.A. benefits after the first four days of his illness. He consequently received $25 per day of R.U.I.A. benefits for April 13, 14, 15 and 16, 1978, for a total of $100. Two of these days, April 14 and April 15, were claimant's regular rest days.

Claimant was also eligible to receive a supplemental sickness allowance under Plan A of Carrier's January 1, 1975 Sick Leave Agreement. After the first day of illness, he was allowed a supplemental benefit for April 10, 11, 12, 13 and 16, 1978. The benefit for April 10, 11 and 12 equaled a day's pay at the straight time rate. This amount was to be reimbursed fully by Carrier.

The benefit paid for April 13 and April 16 was reduced by Carrier by the amount claimant received from R.U.I.A. (or $100). Claimant protested this deduction of $100, insisting that Carrier had no right to claim the R.U.I.A. benefit of $25.00 per day paid to claimant for April 14 and 15 as an offset, since these were his rest days and he recovered no supplemental benefit payment for that time.

Claimant does not contest Carrier's right to utilize R.U.I.A. payments as an offset on work days, but it does contest its right to use them as an offset on rest days. Claimant is therefore requesting that this Board direct Carrier to return the $50 it erroneously deducted from his supplemental sickness benefit payment.

The Organization bases this claim on the fact that supplemental sickness benefits are paid on a daily basis for work days only and R.U.I.A. benefits are paid on a continuous basis, including rest days, once the four-day waiting period has elapsed. The Organization cites six awards involving its members and foreign Carriers to support its claim in this case. (The Special Board of Adjustment established pursuant to Appendix K, involving BRAC and Burlington Northern, Inc., Award No. 9, and Award No. 34, R. D. O'Brien, chairman; Case No. 2, Award No. 22, Public Law Board No. 1156, involving BRAC and Richmond, Fredericksburg and Potomac Railroad Co., John B. Criswell, chairman; Public Law Board No. 2006, Award No. 15, involving BRAC and Chicago and North Western Transportation Co., D. Eischen, chairman; and Third Division Awards 21953, G. S. Roukis, referee, and 22587, J. J. Mangan, referee).

In each of these cases, the referee has concluded that R.U.I.A. benefits can only be used by Carrier as an offset against other supplemental benefits on a daily basis and not on a total period basis. The Organization therefore requests that this Board sustain claimant's claim.

The Carrier argues that the Organization's interpretation of the Agreement allows an employe to receive more money while he is off sick than if he had worked. That would be a tortured interpretation of the Agreement and was never the intent of the parties. Carrier also argues that the awards cited by the Organization to support its position in this claim are not on point and that, if read carefully, they lend support to Carrier's position. Carrier therefore requests that this Board deny the claim.

The language at issue in this dispute is contained in paragraphs 2 and 3 of Plan A, which became a part of the schedule Agreement in September 1974. It reads as follows:

> "2. For any period for which an employe is entitled to supplemental sickness benefits under the foregoing paragraph and benefits are not payable under R.U.I.A. for such period, supplemental sickness benefits will be payable to such employes in amounts established in paragraph (1) of this Plan A.
>
> 3. For any period for which an employe is entitled to supplemental sickness benefits under the foregoing paragraph and sickness benefits are also payable under the R.U.I.A. for such period. Supplemental sickness benefits will be payable to such employe

"in such amounts so that such supplemental benefits when added to the benefits payable under R.U.I.A. shall total the daily amount established in paragraph (1) of this Plan A. (Paragraph (1) refers to a day's pay as calculated on a regular straight-time basis.)"

The issue simply is does paragraph 3 authorize Carrier to deduct all R.U.I.A. payments received by claimant from the supplemental sickness benefit he received or can it only deduct the R.U.I.A. payments received by claimant on the days it paid claimant a supplemental benefit?

This Board has carefully reviewed the record of this case. It has taken special note of Carrier's argument that the language of paragraph 3 clearly establishes that it can deduct all R.U.I.A. benefits received by claimant from supplemental benefits paid him. We do not, however, find Carrier's arguments persuasive. Paragraph 3 does speak of periods during which benefits are payable to employes and it does say that R.U.I.A. benefits will be added to supplemental benefits, but it concludes with the statement that the sum of the benefits will equal the daily amount established in paragraph (1).

In face of the parties referral to the daily amount in paragraph three, it is difficult to conclude that that daily amount would be arrived at in any way other than adding the R.U.I.A. benefit for that day to the supplemental benefit due. This Board cannot conclude that paragraph 3 establishes the benefits on any other basis than a daily basis.

The Organization has presented six awards that have decided the identical claim that is before us now in favor of the claimants. We have carefully read those awards and the dissent in Award 21953 and can find no basis for not applying them in this case. Paragraph 3 does not, as Carrier argues, stipulate that benefits should be calculated on a periodic basis or as total benefits. It very clearly speaks about a daily amount to be paid. Nowhere in Plan A are R.U.I.A. payments on rest days discussed. One can only construe the language relating to the benefits involved in this situation to be the benefits paid or the benefits received on a work day. Plan A clearly identifies work days as days for which benefits can be paid. While Carrier might contend that the Organization's argument that R.U.I.A. payments received on rest days should not be subtracted from the benefits paid is not equitable,

it is difficult to argue that the practice is barred by the Agreement and not supported by all of the previous awards on the subject.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulus
Executive Secretary

Dated at Chicago, Illinois, this 16th day of March 1981.

DISSENT TO AWARD 23206
DOCKET NO. CL-23185
REFEREE DENNIS

The Majority erred in finding that: "The agreement was violated." In this case the basis for this erroneous finding is found on page three of the Award, where it is held that: "The Organization has presented six awards that have decided the identical claim that is before us now in favor of the claimants." (Emphasis added), and then the majority concludes on page four with the statement: "It is difficult to argue that the practice is barred by the Agreement and not supported by all of the previous awards on the subject," (Emphasis added). In the foreign line awards relied upon, the specific agreement provisions dealing with R.U.I.A. benefits recaptured by the Carrier were substantially different from the provisions of the sick leave agreement under interpretation in this case. This fact was repeatedly brought out by the Carrier during all stages of handling on the property and before the board. The sick leave agreement involved in this dispute was purposely designed by the Carrier to recapture all R.U.I.A. benefits paid the employee, "For any period for which an employee is entitled to supplemental sickness benefits . . ." (Emphasis added). The agreement provisions in the foreign line awards erroneously relied upon by the majority provide for recapture on a daily basis. In view of the distinct differences in the agreement provisions, there is no contractual support for sustaining the claim here involved. The majority applied awards involving foreign line agreements not identical to those on Southern Railway.

The Carrier demonstrated in the record that in a Section 6 Notice served by the Organization in 1971, the General Chairman proposed a provision for

the new sick leave rule, that would have provided for daily rather than periodic recapture of the R.U.I.A. benefits paid the employees. This proposal was rejected by the Carrier because it would have made the new sick leave rule susceptible to the very interpretation that the majority has now erroneously placed on it. Therefore, the Organization has obtained from the Board by this award what it could not obtain through negotiations between the parties as required by the Railway Labor Act has amended.

The Award is erroneous and does not represent a correct interpretation of the sick leave agreement on Southern Railway. An interpretation applied to one agreement is not correctly applied to another unless the Agreements are the same. The majority failed to follow this fundamental principle of contracts and as a result rendered a decision that is an absolute error.

Accordingly, Award 23206 is palpalbly erroneous and this claim was incorrectly and improperly sustained and we dissent.

P. E. LaCosse

W. F. Euker

J. E. Mason

J. R. O'Connell

P. V. Varga