

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23322
Docket Number CL-23419

John B. LaRocco, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(Elgin, Joliet and Eastern Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-9312) that:

1. Carrier violated the effective Clerks' Agreement when it failed to properly compensate Clerk R. Cunningham a full eight (8) hours on August 24, 1979;

2. Carrier shall now compensate Mr. Cunningham one (1) hour's pay at the pro rata rate of Position SK-102 for August 24, 1979.

OPINION OF BOARD: Claimant, a chauffeur in the Stores Department at Joliet, Illinois, seeks one hour of compensation at the pro rata pay rate for Position SK-102. On August 24, 1979, claimant was working his usual 8:00 a.m. to 4:30 p.m. shift when he became ill at about 3:30 p.m. Claimant asked to be relieved of his duties for the remainder of his shift so he could go home. The Carrier contends that claimant voluntarily quit his shift on August 24, 1979, but the record demonstrates that the Carrier, if it did not actually give him permission to go home, did at least acquiesce to claimant's departure. No other employe replaced claimant for the remaining hour of his shift. The Carrier paid claimant seven hours of wages for August 24, 1979. Claimant had exhausted all his paid annual sick leave before August 24, 1979. The claim has been properly processed to this Board and all arguments were timely raised on the property.

Two Rules from the applicable contract are pertinent to this dispute:

"RULE 36 - DAY'S WORK

Eight (8) consecutive hours or less, exclusive of the meal period, shall constitute a day's work for which eight (8) hours' compensation shall be allowed, except as otherwise provided herein.

"An employee will not be entitled to be called for more than one (1) tour of duty each twenty four (24) hour period.

NOTE: If an employee is relieved from duty at his own request during his assigned hours, compensation will be allowed for the day at pro rata rate, provided it is not necessary to call another employee to relieve him."
(Emphasis added)

"RULE 56 - SICK LEAVE

(a) Employees covered by this agreement shall be allowed sick leave with pay during each calendar year as follows:

1. Employees who on January 1st have been in service one (1) year and less than ten (10) years, ten (10) working days.

2. Employees who on January 1st have been in service ten (10) years or (sic) over, fifteen (15) working days.

...

(c) Employees absent from work a fractional part of a day due to sickness may have said fractional part of the day - absent computed on the basis of the closest whole hour or hours charged against their annual sick leave provided herein." (Emphasis added)

The Organization relies on the note portion of Rule 36 arguing that an employee who properly requests to be relieved of duty is absolutely entitled to one full day's compensation unless a replacement is called. According to the employees, if illness was an exception to Rule 36, it would be expressly stated like the replacement proviso. Since no replacement worked the remainder of claimant's shift, claimant is entitled to eight hours pay. Furthermore, the Organization contends Rule 36 is specific while Rule 56 is general and specific contract terms supersede conflicting general provisions. Lastly, the Organization states that because, in past disputes, the Carrier has taken the position that Rule 36 is specific, it is equitably estopped from asserting that Rule 36 is general in this controversy.

The Carrier, on the other hand, urges us to deny the claim because Rule 56 is intended to govern all disputes concerning paid time for absences caused by illness. If claimant is to be paid for the remaining hour on August 24, 1979, he would successfully extend his sick leave benefits beyond the clear limitations contained in the agreement. Furthermore, because Rule 56(c) sets forth a method for computing fractional sick leave pay, the specific procedure of that Rule is paramount to the general terms of Rule 36. Lastly, the Carrier argues that a past practice has developed where employees have not been paid for the balance of their shift when their sick leave is exhausted.

We start with the assumption that the parties do not negotiate a contract which contains conflicting provisions. Thus, if Rules 36 and 56 are susceptible to any reasonable interpretation which, when applied to the facts of this case, reconciles or avoids the apparent conflict, we must adopt that interpretation.

After carefully considering the primary arguments advanced by both parties, we rule that Rule 36 governs the instant case for two compelling reasons. First, Rule 36, by its language, mandates a day's pay (as opposed to pay for hours actually worked) for employees who properly request to be relieved from duty except where a replacement works the remainder of the relieved employee's shift. The reason for the employee's absence is irrelevant. Employees who are relieved from duty due to illness would suffer discriminatory treatment compared to employees relieved for other reasons unless ill employees could also invoke Rule 36. Second, Rule 56(c) uses the permissive term "may". Rule 56(c), therefore, gives the employee the choice of whether or not to use his sick leave to receive the remainder of his pay when he becomes ill during his shift and is relieved of his duty at his own request. Presumably, the employee would elect to apply Rule 56(c) in instances where the Carrier utilized a replacement worker because the relieved employee would not be entitled to a full day's pay under Rule 36. For these reasons, claimant is entitled to one hour of pay at the pro rata rate for position SK-102 at the rate of pay in effect on August 24, 1979.

Since we have adopted an interpretation of Rules 36 and 56 which vitiates the apparent conflict between those rules when applied to the facts of this dispute, we need not consider either the Organization's estoppel argument or the Carrier's past practice contention.

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. Paulsen
Executive Secretary

Dated at Chicago, Illinois, this 19th day of June 1981.

