

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23406
Docket Number CL-23986

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-9437) that:

1. Carrier violated the effective Clerks' Agreement when it failed to allow Clerk G. Lepper fifteen (15) days' pay as sick leave allowance at the rate of her former position AC-923, Senior Timekeeper, for the period of January 2 through January 22, 1980.

2. Carrier shall now be required to pay Clerk G. Lepper (her estate) fifteen (15) days' pay as sick leave allowance for the period of January 2 through January 22, 1980.

OPINION OF BOARD: On September 18, 1979, claimant began an extended leave due to illness. She was never able to return to her position as a Senior Timekeeper and she passed away on February 11, 1980. Claimant had been employed by the Carrier for more than ten years. The Organization brings this claim, on her behalf and on behalf of her estate, for fifteen days of sick leave pay covering the fifteen work days in the period from January 2, 1980 through January 22, 1980.

Rule 56(a) of the applicable agreement which controls this dispute states:

"(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 of (sic) over, fifteen (15) working days. (Emphasis added.)

The Organization contends that under prior awards interpreting Rule 56 on this property, claimant was entitled to sick leave pay for the first fifteen working days in 1980 even though she never actually performed work during 1980. See Third Division Awards No. 21478 (Eischen); No. 22914 (Kasher). The Carrier contends the claimant was not an employee, within the meaning of Rule 56, during 1980 because she never returned to her assigned position after September 18, 1979. Also, the Carrier contends that there is no language in Rule 56 which provides for disbursement of sick leave pay to the estate of a former employee.

During the period from January 2, 1980 through January 22, 1980, claimant was in the service and an employee of the Carrier. Since she had more than ten years of service, she accrued a right to receive sick leave pay beginning on January 2, 1980. Third Division Award No. 22194 (Kasher). Her claim for sick pay is not cancelled merely because she never returned to work during 1980 since she had an absolute right to receive the fifteen days of pay as of January 22, 1980.

Similarly, claimant's right to a sick leave allowance did not expire upon her death. The Carrier has cited agreements on other properties which specifically provide for payment of accrued but unused sick leave pay to the estate or beneficiary of a deceased employee. While we question the relevance of these other agreements, we note that the sections cited by the Carrier concern the employer's obligations upon the death of an employee. None of the provisions address the issue of paying money to an employee's estate where the employee gained a right to receive payment while still living.

We will, therefore, compel the Carrier to pay the claimant's estate fifteen days of sick leave pay for the period from January 2, 1980 through January 22, 1980.

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;

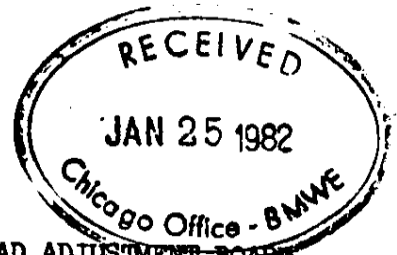
That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

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 8th day of January 1982.