

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23837
Docket Number CL-23392

Martin F. Scheinman, Referee

PARTIES TO DISPUTE:

{ Brotherhood of Railway, Airline and Steamship Clerks
Freight Handlers, Express and Station Employees
{ Kentucky and Indiana Terminal Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9010) that:

Carrier violated the agreement on Saturday, April 7, 1979, when it denied Sick Benefit Payments to Ms. Yvonne L. Thomas, as they are provided for under Rule 58-A of our current agreement.

Carrier shall because of this violation, compensate Ms. Thomas either 85% or 100% whichever is applicable, for the rate of the position that she occupied on this date.

OPINION OF BOARD: The Organization claims that Carrier violated the Agreement when it denied Claimant, Yvonne L. Thomas, Clerical Machine Operator, Sick Benefit pay for April 7, 1979. Sick Benefits are provided under Rule 58-A. It states:

"Rule 58-A - Sick Benefits

1. There is hereby established a non-governmental plan for sickness allowances supplemental to the sick benefit provisions of the Railroad Unemployment Insurance Act as now or hereafter amended. It is the purpose of this plan to supplement benefits payable under the sickness benefit provisions of the Railroad Unemployment Insurance Act to the extent provided herein and not to replace or duplicate them.

2. Subject to conditions hereinafter set forth, employees who have been in continuous service of the company for the period of time as specified will be allowed sick benefits in such year for time absent account bonafide sickness on the following basis:

<u>LENGTH OF SERVICE</u>	<u>BENEFIT DAYS PER YEAR</u>	
1 to 4 years	5	85%; except where the work of the absentee is kept up by the remaining employees (within the assigned hours of the remaining employees) without cost to the carrier or can reasonably be deferred, the benefit rate will be 100%.
4 to 8 years	10	
8 years and over	12	

In order to qualify for the first year's service, an employee must have rendered compensated service on not less than 120 days during the preceding calendar year. In order to qualify for benefits thereafter an employee must have rendered compensated service on not less than 75 days in the preceding calendar year.

3. To provide a reserve against a prolonged sickness, an employee will accumulate sick benefit allowance under this agreement during any given year to the extent of his unused allowance which accrued under the above table the preceding year. Any such accrued allowance will, in cases of bona fide sickness, first be applied against his absences before applying sick benefit allowance accruing during the year in which the absence occurs.

NOTE: This rule does not comprehend any accumulated sick benefit allowance from any year except the one immediately preceding the year during which the absence occurs.

4. For any day for which an employee is entitled to sickness benefits under Section 2 of this agreement and such days of sickness are not days for which benefits are payable under the Railroad Unemployment Insurance Act, sickness benefits will be payable to such employee in such amounts equal to the daily benefit amount established in Section 2.

5. For any day for which an employee is entitled to sickness benefits under Section 2 of this agreement and such days are also days for which sickness benefits are payable under the Railroad Unemployment Insurance Act, sickness benefits will be payable to such employee in such amounts so that such benefits from the Unemployment Insurance Act shall total the daily benefit amount established in Section 2 above.

6. No allowances shall be made under this agreement unless the employee's sickness is bonafide and of sufficient severity to require an absence from work. Satisfactory evidence as to sickness will be required in case of doubt.

7. An employee making claim for supplemental sickness benefits shall timely file for sickness benefits under the Railroad Unemployment Insurance Act and will furnish the appropriate officer of the company with respect to each day for which benefits are claimed a statement setting forth the cause of sickness and amounts received or due under the sickness benefit provisions of the Railroad Unemployment Insurance Act and shall authorize the company to verify the information submitted.

8. In the event an employee forfeits sickness benefits under the Railroad Unemployment Insurance Act for any day of sickness because of his failure to file for such benefits, he shall also forfeit any supplemental benefits hereunder for that day.

9. It will be optional with the carrier to fill or blank a position of an employee who is absent account his personal sickness and is receiving an allowance under this agreement. If the carrier elects to fill the vacancy, rules of the agreement applicable thereto will apply. The right of the carrier to use other employees occupying positions coming under the scope of this agreement to perform the duties of the position of the employee absent under this agreement is recognized.

10. No allowance will be made under this agreement for any day on which an employee receives compensation under any other rule or agreement.

11. An employee falsely claiming time under this agreement will be subject to disciplinary action.

12. Upon termination of employment relationship or retirement the provisions of this agreement will not be applicable.

13. The daily rate referred to herein means the daily or guaranteed rate, whichever is higher."

The Organization contends that Claimant reported that she was sick at about 9:30 p.m. on April 7 and that Claimant did claim sick benefits on the appropriate form pursuant to Rule 58-A.

Carrier, on the other hand, argues that the Agreement was not violated. Carrier justifies the denial of sick leave benefits due to the fact that Claimant was seen at a shopping mall at 5:30 p.m. on April 7th. Therefore, it determined that the claim of illness was not bona fide. Carrier further asserts that Claimant did not submit any satisfactory evidence as to sickness.

Paragraph 6 of Rule 58-A provides that "Satisfactory evidence as to sickness will be required in case of doubt." Under this provision, in cases of doubt, Carrier has the right to request evidence that an absence is bona fide. That is, if Carrier wishes to question an employee it has the burden of requesting such information.

Here, it is undisputed that Claimant was at the shopping mall. Yet, Carrier failed to utilize the contractual method for validating an absence. Having failed to do so, Carrier had no grounds for denying Claimant Sick Benefits. Thus, Carrier's action violated Rule 58-A of the Agreement.

One final word: Our Award should not be construed as indicating that a Claimant is immune from providing adequate documentation of a sickness in cases of doubt. Surely, if asked here Claimant would have been required to provide such documentation. Our Award stands only for the proposition that Carrier, under the plain meaning of the Agreement, has the affirmative obligation of requiring documentation.

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: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 26th day of March 1982.

