NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 24300
THIRD DIVISION Docket Number CL-24165

Herbert L. Marx, Jr., Referee

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9484) that:

1. Carrier violated the Agreement between the parties and in particular Supplement No. 3 (Sick Leave) when it improperly deducted $50.00 Railroad Unemployment Insurance benefits from the sick benefits due Clerk K. D. Winn pursuant to Supplement No. 3 (Carrier's File MP-BRAC-179).

2. Carrier shall now be required to reimburse Clerk Winn in the amount of $50.00 which was improperly deducted, i.e. $25.00 each rest day, August 9 and 10, 1980.

OPINION OF BOARD: Undisputed evidence in this dispute shows that the Claimant suffered a personal illness for a period commencing Saturday, August 2, 1980, through Sunday, August 10, 1980. His rest days were Saturday and Sunday.

Under the Railroad Unemployment Insurance Act, Claimant received benefits of $25 per day, commencing with the fifth day of illness. Since these payments are made on a calendar day basis, RUIA benefits were paid at $25 per day for Saturday and Sunday, August 9-10, as well as for August 6-8.

Under Supplement No. 3 of the Agreement between the Carrier and the Organization, the Claimant was also entitled to sick leave benefits. In pertinent part, Supplement No. 3 reads as follows:

"SICK LEAVE

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

(b) Subject to the conditions set forth herein employees who have been in the continuous service of the Company for the period of time specified below, and who qualify for paid vacation by having performed sufficient service in the preceding calendar year pursuant to national vacation agreement, as amended, will

be eligible for sick leave allowances for days they are unable to work because of bona fide sickness..."

The "sick leave allowance for days ... (the employe was) unable to work because of bona fide sickness" were the Claimant's five work days from Monday, August 4 through Friday, August 8. Since the sick leave benefits are intended to "supplement" RUIA benefits, the parties are in agreement that $25 per day should be deducted from sick leave pay for August 6-8. The Carrier argues, however, that it may also deduct the $50 RUIA benefits for August 9-10 (rest days), while the Organization claims that such deduction is improper.

The Carrier maintains that this dispute may not be resolved by the Board since the Board "is not empowered to interpret or enforce Federal laws" such as the RUIA. The Carrier is correct that the Board has no such jurisdiction, but the Board sees no dispute here concerning payment of RUIA benefits -- which both parties acknowledge are properly payable and were paid for August 6-10. The dispute here is the amount of sick leave allowance to which the Claimant is entitled under Supplement No. 3 of the Agreement. Here there can be no question that the Board has full jurisdiction, and the Board has no hesitation in resolving the dispute on this basis.

Supplement No. 3 provides for benefits for "days" an employe is "unable to work". This can be read in no other fashion than to apply to work days. Such language was adopted with the full knowledge that RUIA benefits are payable on a calendar-day basis regardless of work schedules. The Carrier argues that, in this instance, the employe received a combination of benefits in excess of the pay he would have received if he had not been ill. While this may be the case, such consideration may not defeat the clear language of Supplement No. 3. In previous disputes involving the same question, this Board has sustained the claims. The Opinion of the Board in Award No. 22587 (Mangan) reads as follows:

"The facts in this case are not in dispute. Under Rule 62½ employes, such as Claimant herein, are to be paid a defined number of 'work days' as sick leave allowances when off account sickness. The sick leave allowances are paid for 'work days' only and are offset by any sickness benefits received from the Railroad Unemployment Insurance Act for that same 'day'.

R.U.I.A. benefits are not payable on the first four (4) consecutive days of what is called a fourteen (14) day benefit period but are then payable for each day of sickness in the benefit period without regard to 'work days' or 'rest days'.

Carrier seeks to use R.U.I.A. benefits paid Claimant on his 'rest days' as an offset to benefits due Claimant on his 'work days' under Rule 62½.

The single issue regarding use of R.U.I.A. benefits for 'rest days' as an offset against sickness benefits for 'work days' has been decided at least three (3) times in the past year and one-

half. The first Award resolving an identical dispute, Third Division Award 21953, was authorized by Dr. George S. Roukis, Referee, on March 15, 1978. Public Law Board 1156, Award 22, Referee John B. Criswell decided an identical case on May 24, 1978. Referee Robert M. O'Brien, Award 34 of the Burlington Northern Special Board of Adjustment decided an identical case on May 30, 1978. The above cited Awards are not palpably erroneous and we agree with them. There are no contrary Awards cited. The rule of stare decisis must prevail.

The claim is sustained as presented."

The language of Supplement No. 3 is sufficiently clear and precise to make reference to alleged previous practice irrelevant. For further emphasis, the Board again notes that Supplement No. 3 refers to "days" on which an employe is unable to work -- and not to a total payment for a period of illness, regardless of the employe's work schedule.

One further matter requires resolution. The Carrier notes that the Organization on July 1, 1981 served on the Carrier a Section 6 notice under the Railway Labor Act which would, if adopted, change the sick leave provision to emphasize to the point of redundancy the interpretation argued by the Organization herein. This, argues the Carrier, indicates an "admission" that the pre-existing rule did not contemplate such a meaning. We do not agree. As noted above, the Board has found Supplement No. 3 supportive of the Organization's position. Thus, the purpose of the Organization in proposing a revised rule in 1981 does not require exploration by the Board.

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 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: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 14th day of April 1983.