

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24611  
Docket Number CL-23693

Herbert Fishgold, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,  
( Freight Handlers, Express and Station Employees

PARTIES TO DISPUTE:

(  
(Chicago and North Western Transportation Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9324) that:

1. Carrier violated the agreement rules, particularly Rule 57, when it failed to compensate Mr. L. J. Wierichs at the rate of the last position worked account sick leave absence, commencing March 21, 1978 and ending on May 6, 1978 (34 claim dates), and

2. Carrier shall be required to compensate Claimant for 34 dates on which sick leave occurred commencing March 21, 1978 and ending May 6, 1978 at the rate of pay assigned to the Star Agency position, Appleton, Wisconsin (\$1,739.23 per month).

OPINION OF BOARD: Prior to February 28, 1978, Claimant was employed by Carrier as Star Agent at Appleton, Wisconsin. Effective February 28, 1978, Claimant was disqualified from that position and suspended through March 20, 1978 as the result of a disciplinary investigation which is not the subject of this dispute.

Thereafter, Claimant was granted a medical leave of absence from March 21 until May 6, 1978, and subsequently displaced a junior employe from the Chief Clerk position effective May 8, 1978. Claimant then filed a claim for sick pay benefits from March 21-May 6, 1978, which was paid at the rate of the extra board guarantee.

The sole issue before this Board is the question of the rate of compensation for Claimant for such leave absence days commencing March 21, 1978 and ending May 6, 1978.

Rule 57 states that sick pay is paid upon a percentage of the daily rates. Section (c) 6 provides that:

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

The employes take the position that Claimant should have been paid based on the rate of the Star Agent, the position from which he had been disqualified. The Carrier contends that because Claimant did not own a position when he commenced his sick leave, he did not have a daily rate. Consequently, the extra board guaranteed rate was the proper rate to use in computing his sick leave pay under Rule 57.

It is the Board's conclusion that Claimant lost all rights to the benefits of the Star Agent position when he was disqualified from it on February 28, 1978. Said disqualification was upheld by this Board in Award 24238. In this regard, the Board further concludes that Rule 57 does not require payment at the rate of the last position held. Although the employees contend it has been the past practice of Carrier to pay sick leave on the basis of the rate of his former position, they presented no evidence to support this 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 Employee 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

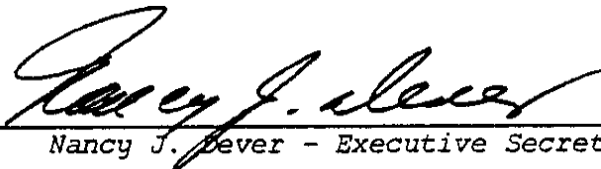
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 13th day of January 1984.

