NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 25423
THIRD DIVISION Docket Number CL-25331

John E. Cloney, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, (Freight Handlers, Express and Station Employes (The Chesapeake and Ohio Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9800) that:

(a) The Carrier violated provisions of the Clerks' General Agreement and supplements thereto, when on June 25, 1980 its Officers refused to properly compensate J. R. Cumpton for one day lost due to personal illness on June 24, 1980, under the provisions of Rule 60.

(b) That the Carrier shall be required to properly compensate J. R. Cumpton for the date of June 24, 1980, under the provisions of Rule 60 of the Clerical Agreement.

OPINION OF BOARD: Claimant J. R. Cumpton, a Section Storekeeper in Carrier's Purchases and Materials Department was notified in April, 1978, that because of his record "in case of future absences, alleging personal illness, you will be required to furnish a doctor's certificate".

After an absence on June 24, 1980, he presented a statement on the letterhead of Dr. E. H. Berkley, a Chiropractor, which stated in its body:

> "Jim Cumpton attended my office for adjustment on the above date. Unable to work."

It was signed Dr. E. H. Berkley.

On June 25, 1980, apparently the same day that it was submitted, Supervisor R. W. Martin returned the statement saying "your claim for payment is declined in that the above statement is not covered by the sick leave provision of Rule 60".

Rule 60 in pertinent part states:

> "6. The employing officer must be satisfied that the illness is bona fide. Satisfactory evidence in the form of a certificate from a reputable doctor will be required in case of doubt. The Local Chairman and the General Chairman will cooperate with the Railway to the fullest extent to see that no undue advantage is taken of this rule."

The Organization contends the Berkley statement satisfies the Rule and establishes the legitimacy of the claim of illness. It further contends Claimant had previously submitted similar statements from Berkley which were accepted. Finally, the Organization attached Exhibits to its Ex Parte Submission seeking to establish certain insurance Carriers in the Railway Industry provide coverage for services rendered by Chiropractors. We have not relied on those Exhibits in reaching our Award.

The Carrier contends in view of Claimant's record there was doubt "as to the validity of...(his)...absence". It further contends:

> "...it has always been the intent of the pertinent provision of Rule 60...that certification of illness, when requested by the Carrier, would be obtained from persons who have received a degree of Doctor of Medicine from a recognized institution and are licensed in the practice of medicine, and a chiropractor does not fall within this purview."

In connection with the Organization's claim that statements from Berkley had been accepted in the past the Carrier referred the Organization to other similar claims which had been resisted. It referred to one specifically in which it argued the absenteeism at Raceland, Kentucky "far exceeds" that of its other operations and noted that Berkley is a retired employe of the Carrier who practices "immediately adjacent" to the Raceland property. In declining that claim the Carrier noted supervision, after receiving a statement from Berkley, requested more specific information from Claimant who "declined to discuss the specifics of his problem...".

In the view of this Board the issue to be decided is whether a statement from a Chiropractor satisfies the requirements of Rule 60. We note the claim was initially denied because the "statement is not covered by the sick leave provision of Rule 60". We also note there is no evidence of any request for additional or more specific information as there had been in the earlier case referred to by the Carrier. We therefore conclude that it was not the content of the certificate, but rather its source, that formed the basis of the objection to it. This is confirmed by the Carrier's statement that the Rule contemplates the certificate would be from a person with a degree of "Doctor of Medicine" and with a license to practice medicine. We can read nothing sinister into the fact that Berkley is a former employe of the Carrier who has his office next door to its property and we conclude that for the purposes of this case he must be treated as a stranger.

The Carrier correctly argues this Board has authority only to interpret and apply the Agreement, not to change it. It insists the Carrier has the prerogative "of requiring validation of an employee's illness by a licensed physician when the illness is suspect" and directs our attention to Third Division Award No. 14158. In that case the Claimant had produced no medical documentation when the Rule required a "certificate from a reputable physician" (emphasis supplied).

Both parties assert a past practice favorable to their position. However the only evidence of past practice consists of the Carrier's position in a claim in which after furnishing a statement from Berkley the Claimant was unresponsive to requests for more specific information. We conclude no probative evidence of past practice has been established by either party.

The language of Rule 6 is obviously all important. The Carrier argues it means a person with the Doctor of Medicine degree from a "recognized institution" and with a License from the State to practice medicine. What it actually says, of course, is "reputable doctor".

The Board is aware of its obligation to apply the language of the Agreement as the parties have written it, but here, as is frequently the case, that is the heart of the problem. The term "doctor" is commonly used to describe and refer to practitioners in many fields of the healing arts. In most States these persons are regulated and required to obtain Licenses.

The Carrier's Rebuttal Submission quotes at length from portions of the Kentucky Revised Statutes dealing with Chiropractors. A portion thereof defines a "doctor of chiropractics". The evidence shows that in Berkley's letterhead he describes himself as Dr. E. H. Berkley and he signs his name in that manner. There is no evidence or even contention that he does so without right or in violation of the State Statute and this Board certainly will not presume persons act illegally. Had the parties wished to require certificates from Doctors of Medicine to the exclusion of other practitioners of the healing arts, it would have been a simple matter to so state. They did not. We must conclude that Claimant produced a statement from a doctor within the meaning of the Rule, and there is nothing to suggest he is not "reputable".

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: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of April 1985.