

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26386
Docket Number TD-26253

Marty E. Zusman, Referee

PARTIES TO DISPUTE: (American Train Dispatchers Association
(The Belt Railway Company of Chicago

STATEMENT OF CLAIM:

"Claim for sick leave allowance filed on behalf of Dispatcher R. P. Hensley for the date of January 10, 1983."

OPINION OF BOARD: Claimant was off work due to an upset stomach on Monday, January 10, 1983. On Thursday, January 13, 1983, Claimant filed a "Supplemental Sickness Benefits Claim Form for Clerks & Levermen." The Chief Train Dispatcher requested a physician's certificate as evidence of actual illness as per Agreement Article 4 1/2, Paragraph K in his January 17, 1983, reply.

In the development of this dispute on the property, the Organization responded with the clear statement that:

"Please do not consider this as a claim for time lost for Mr. Hensley. If necessary an appropriate claim will be submitted in a timely manner; ..."

The instant dispute was advanced through the usual steps and after conference submitted to this Board. The Organization's primary argument on the property was twofold; that the Claimant was not abusing the sickness benefits, and that to request a physician's certificate seven days after an illness that did not require medical attention was "ludicrous."

The Carrier argues to this Board that there never was a time Claim made on property, but only a "claim form" filed and discussed. The Board notes that after conference, the Carrier "regretfully reaffirm[s] its original denial of this claim." New arguments before this Board are barred. Nowhere on the property did the Carrier challenge the procedural validity of the Claim and it therefore stands as valid.

On the merits, a review of the Agreement indicates that the Carrier is not restricted from requesting a physician's certificate when it has doubt as to the veracity of the illness. There is substantial evidence in the record that the Claimant had a pattern of sick leave either immediately prior to or following his rest days. That pattern had been previously brought to the Claimant's attention. The request for a doctor's verification was made upon more recent evidence of a continuing pattern.

This Board notes that the Agreement allows the Carrier the right to request such a certificate. The employee was well aware of the Agreement provision; the Carrier's policy with respect to the Agreement; and the Carrier's prior concerns with his attendance. The claim form was filed three days after the illness by the Claimant and the request for a physician's certificate followed the weekend. There is sufficient evidence in the record that the Carrier acted in a reasonable and responsible manner and in full compliance with the Agreement. This Board will therefore deny the instant Claim.

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

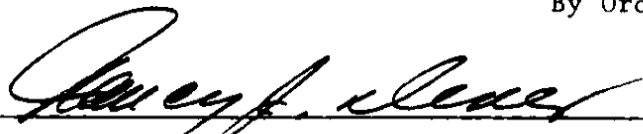
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:



Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 25th day of June 1987.

Labor Member's Dissent
to
Award 26386 — Docket TD-26253
Referee Zusman

This Award is correct in holding that the claim was properly before the Board and the Carrier's procedural position came too late when first raised in its Submission.

We differ, however, with respect to the findings on the claim's merits.

It is not disputed the Carrier has the right, pursuant to Article 4½(k), to require satisfactory evidence of sickness in the form of a certificate from a reputable physician, in case of doubt.

The problem here was Carrier's failure to make known the necessity for such certificate until seven days after the illness, which was not attended by a physician. The Claimant was thereby placed in an impossible situation. No reputable physician will certify a week-old unattended illness of which he has no personal knowledge.

First, it is not always necessary to see a doctor when one is sick.

Third Division Award 19911:

" . . . We do not suggest that an employee must see a doctor on the first day of a sickness or even that each sickness requires a doctor's care at some point during the sickness. . . ."

Second, the Carrier did not make a timely request that a doctor's certificate be supplied.

Third Division Award 23837:

"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."

Third Division Awards 21979, 22035, and 22992 hold similarly.

If the Carrier had cause for doubt, it was obligated to make this known to the Claimant employee in time for him to undertake action to satisfy the requirement of Article 4½(k). The Carrier has an obligation under this rule to the employee, as well as the employee's obligation to comply.

Labor Member's Dissent to Award 26386 - Docket TD-26253, continued

The Majority seemed impressed by the Carrier's contention there was a pattern to the Claimant's absences immediately prior to or following his rest days. In panel argument, it was pointed out that of eight dates listed, three were either immediately before or after his rest days, i.e., 37.5%. But if days were selected at random, the chances of selecting immediately preceding or following days would be 40%.

But more significantly, even if there were a "pattern", the Carrier's compilation of eight absences all followed the claim date, and therefore, no discernable "pattern" or record of absences preceding the claim date was demonstrated.

This Dissent is filed because we strongly disagree with the Majority's holding with respect to the merits of the dispute. The Carrier did not act reasonably and responsibly.



R. J. Irvin
Labor Member

