

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 26823
Docket No. CL-26809
88-3-86-3-75

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, (Freight Handlers, Express and Station Employes
(Terminal Railroad Association of St. Louis

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood (GL-10079) that:

1. Carrier violated the Clerks' Rules Agreement when, on August 6, 1984, its Operations Supervisor issued blanket order that regular Crew Clerks and Master Roster No. 3 Extra Board Clerks must furnish doctor's certificate when laying off due to sickness.
2. Carrier's action is in violation of the Clerks' Agreement, expressly Rules 33 (b) and 51 contained therein.
3. Carrier shall now be required to rescind its blanket order instructions which apply only to a small number of its clerical employees."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

On August 4, 1984, the Carrier's Operations Supervisor issued the following notice:

"ALL CREW CLERKS & MR 3 EXTRA BOARD PERSONNEL:
SUBJECT: SICK DAYS & LAY OFFS.

No regular Crew Clerk will be allowed to lay off more than three (3) days in a thirty (30) calendar day period. MR-3 Extra Board personnel will not be allowed to lay off more than three (3) days out of twenty-two (22) work opportunities. Lay offs will

only be OK if there is an employee available to work. Advance lay offs will be approved on 1st come basis depending on the needs of the Carrier.

Also, in addition to current procedures relative to the need of a doctors slip when laying off sick, any regular Crew Clerk that has a combination of lay offs and sick days exceeding three (3) days in a thirty (30) calendar day period (three (3) days in twenty-two (22) work opportunities for MR-3 Extra Board), they must bring satisfactory evidence as to sickness, preferably in the form of a certificate from a reputable physician..."

According to the Organization, this notice was directed at a specific group of employees, to the exclusion of other groups. The Organization argues that the strict requirements of the notice, particularly as to requiring the furnishing of "satisfactory evidence" of sickness absences, are in violation of Rule 51, Sick Leave.

Rules 51 provides for pay "for time absent because of bona fide case of sickness" up to ten days a year. Section (c), however, provides as follows:

"(c) The employing officer must be satisfied that the sickness is bona fide. Satisfactory evidence as to sickness, preferably in the form of a certificate from a reputable physician, may be required in case of doubt. If the employing officer requires such certificate, the employee shall be notified promptly of this requirement."

The Organization argues that the rigid requirements of the August 6, 1984, notice is in conflict with the provision of Rule 51(c) which requires evidence of illness only "in case of doubt." As contended by the Organization, this implies that sickness absences will be individually subject to review and not governed by a procedure applied invariably.

The Board finds merit in the Organization's argument. While Rule 51(c) provides the Carrier with the means to check on sickness absence as required, it also clearly mandates against any fixed rule applicable in all circumstances.

To similar effect, in considering similar broad-based notices to employees, are Second Division Award Nos. 8251 and 9711.

In its conclusion here, the Board does not dispute the Carrier's right to question the propriety of absence for alleged sickness. Such, however, must necessarily be within the limitations set by Rule 51.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 25th day of February 1988.