

The Third Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(
(New Orleans Public Belt Railroad Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
(GL-10061) that:

1. The Carrier violated Rule 52 and other related rules when it failed or refused to compensate Mr. Mark Petric sick pay allowance for September 11, 23, October 2, and November 11, 1984.

2. The Carrier shall now be required to compensate Mr. Petric sick pay allowance for September 11, 23, October 2 and November 11, 1984."

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.

This case actually involves two (2) separate Claims which were consolidated for handling on appeal to this Board. For reasons apparent in the discussion below, it is necessary to keep the Claims separate and distinct.

In 1984, Claimant was a furloughed "protected" employee under the February 7, 1965, Agreement, as amended August 31, 1981. As such, he was subject to Article IV, Section 5, reading in pertinent part as follows:

"A protected employee shall not be entitled to the benefits of this Article during any period in which he fails to work due to disability, discipline, leave of absence, military service, or other absence from the carrier's service, or during any period in which he occupies a position not subject to the working agreement...."

He also was covered by applicable provisions of the Basic Agreement between the Parties, including Rule 52:

"Rule 52. Sick Leave and Bereavement Leave

1. There is hereby established a non-governmental plan for sickness allowances supplemental to the sick benefit provisions of the Railroad Unemployment Insurance Act as now or hereinafter amended. It is the purpose of this plan to supplement benefits payable under the sickness benefit provision of the Railroad Unemployment Insurance Act to the extent provided in this Section and not to replace or duplicate them.
2. Subject to the conditions hereinafter set forth, supplemental sickness benefits will be paid on a daily basis to an eligible employee who is absent from work due to a bona fide case of sickness (not including pregnancy). The daily benefit amount of the supplemental sickness benefit will be paid on the basis of one day's benefit for each day of sickness (but only for days on which the employee has a right to work) with a maximum of five days' benefit payable in any calendar week during a period beginning on the first date an employee is absent from work due to illness and extending in each instance for the length of time determined and limited by the following schedule:

<u>LENGTH OF SERVICE</u>	<u>PERIOD OF PAYMENT PER CALENDAR YEAR</u>	<u>PERCENT OF DAILY RATE</u>
Less than 2 calendar years	0 Benefit Days	0
2 but less than 5 calendar years	5 Benefit Days	80%
5 but less than 10 calendar years	10 Benefit Days	85%
10 but less than 20 calendar years	15 Benefit Days	90%
20 calendar years and over	20 Benefit Days	95%

3. For any day for which an employee is entitled to supplemental sickness benefits under the foregoing paragraph of this Rule and such days of sickness are not days for which benefits are payable under the Railroad Unemployment Insurance Act, supplemental sickness benefits will be payable to such employee in such amounts equal to the daily benefit amount established in Paragraph No. 2 of this Rule.

4. For any day for which an employee is entitled to supplemental sickness benefits under this Rule and such days are also days for which sickness benefits 'are payable under the Railroad Unemployment Insurance Act, supplemental sickness benefits will be payable to such employee in such amounts so that such supplemental benefits in connection with the benefits from the Unemployment Insurance Act shall total the daily amount established in Paragraph No. 2 of this Rule.'

* * *

8. No payments shall be made under this Rule unless the employee's supervisor is satisfied that the sickness is bona fide and of sufficient severity to require an absence from work. Satisfactory evidence as to sickness in the form of a certificate from a reputable physician will be required in case of doubt.
9. No allowance will be made under this Rule for any day on which the employee receives compensation equal to or in excess of the benefits provided for in this Rule, under any other rule or agreement.
10. An employee falsely claiming sick pay will be subject to discipline.
11. An employee may accumulate unused sick leave from previous years under this Section up to a maximum of fifty (50) days."

Under date of November 6, 1984, the Organization filed the first of the two sick leave pay Claims for the Claimant, as follows:

"Dear Mr. Young:

This is to advise that the Carrier violated the Agreement between the Brotherhood of Railway Clerks and the New Orleans Public Belt Railroad, dated November 1, 1981, Rule No. 52, Sections 1 and 2 thereof, when Clerk Marko V. Petric, II, called in sick to you, his Supervisor, on September 11, 23 and October 2, 1984. After your acknowledgement by telephone conversation on the above dates to Clerk M. V. Petric, II of illness, refused to pay him sick pay on payrolls ending September 15, 30 and October 15, 1984.

Under advisement of Independence Lodge 215 Local Protective Committee and Mr. J. R. Borrelli, Jr., BRAC Representative, this claim is being filed on behalf of Marko V. Petric, II, for three (3) days (24 hours) sick pay, at 85% of rate of pay in effect for the above mentioned dates.

Very truly yours,

/s/Gerald R. Martin
GERALD R. MARTIN
LOCAL CHAIRMAN
BROTHERHOOD OF RAILWAY
CLERKS"

That Claim was denied by Carrier's Assistant Secretary-Treasurer on December 28, 1984, on procedural and merits grounds. That Claim was then appealed directly to the highest designated Labor Relations Officer on February 11, 1985. In handling on the property and before this Board Carrier preserved a procedural/jurisdictional argument that the appeal was defective because the Secretary-Treasurer was not formally advised within sixty (60) days that his December 28, 1984, decision was unacceptable.

This Board is loathe to dispose of Claims on overly technical grounds, but Carrier is within its rights to insist upon compliance with the procedural niceties of the Agreement. The requirement of Rule 28(b) is clear on this point and the Board consistently has construed such provisions strictly as forfeiture clauses. For example, see Third Division Award 19781 which quoted from Third Division Award 17959 and others as follows:

Award 17959 states:

"Further, a review of the record indicates that even before arriving at the stage wherein the claim was amended, the Carrier Officer authorized to receive claims in the first instance declined the claim but has never been notified in writing that his declination has been rejected. This combined with the later amendment of the claim, stands in violation of Schedule Rule 36 of the Agreement, the time limit Rule. Hence, we will dismiss this claim on the procedural provisions of that Rule, without considering the merits of the case."

Many other Awards of this Board have, likewise, affirmed the principle reiterated above. See Third Division Awards 8564, 10317, 10793, 13511.

Numerous other Awards of this Board have also held, under circumstances similar to those present in the instant case, that failure to timely appeal a Claim on the property bars any further prosecution of the Claim. See Third Division Awards 10179, 11980, 16283, 18007.

Therefore, in view of the fact that Carrier was not notified that the initial decision denying the Claim was rejected and also that appeal to the next higher officer designated to receive such appeal was not timely taken, we have no alternative but to dismiss the Claim on the procedural provisions of Rule 36 of the Agreement without considering the merits of the case.

Based upon the foregoing, Part 1 of the present Claim must be dismissed without reaching the merits relative to Claim dates September 11 and 23 and October 2, 1984.

The Claim for November 11, 1984, stands on a separate and firm footing. Under date of December 5, 1984, the Organization filed that Claim for Claimant reading as follows:

"Dear Mr. Mathews:

This is to advise that the Carrier violated the Agreement between the Brotherhood of Railway Clerks and the New Orleans Public Belt Railroad, dated November 1, 1981, Rule No. 52, Sections 1 and 2 thereof, when Clerk Marko V. Petric, II, called in sick to you, his Supervisor, on November 11, 1984. After Clerk M. V. Petric, II, fulfilled your request to see his Physician, he then submitted NOPB Form 66 and was sent to the Public Belt's Physician. Having met the requirements of Rule No. 52, Section 8, showing proof of bona fide illness, you still refused to pay him sick pay for November 11, 1984, on payroll ending November 15, 1984.

Under advisement of Independence Lodge 215, Local Protective Committee and Mr. J. R. Borrelli, Jr., BRAC Representative, this claim is being filed on behalf of Marko V. Petric, II for one day (8 Hours) Sick Pay, at 85% of rate of pay in effect for the above mentioned dates.

Very truly yours,

/s/Gerald R. Martin
GERALD R. MARTIN
LOCAL CHAIRMAN
BROTHERHOOD OF RAILWAY
CLERKS"

The Manager Car Accounting denied the Claim by letter dated January 28, 1985, reading in pertinent part as follows:

"Mr. Petric was given a letter on November 12, 1984, cautioning him of his excessive absenteeism. This was the main reason that he was sent to the doctor, which is in accordance

with the Controlling Agreement, Rule 56. The other reason is because Mr. Petric complained of a sore back and it was my intention to make sure, through the concurrence of a physician, that he was able to work after being off. This had nothing to do with qualifying him for sick pay under Rule No. 52, Section 8.

Your claim on behalf of Marko V. Petric, II, for one day (8 hours) sick pay, at 85% of rate of pay, is herewith declined."

That Claim was appealed in a timely fashion to the highest designated Labor Relations Officer and Carrier concedes that the Manager Car Accounting received the required Rule 28(b) rejection notice. Accordingly, the Claim for November 11, 1984, is properly before us on the merits.

The record shows that Claimant met all conditions for payment of Rule 52 sick leave benefits for the Claim date of November 11, 1984, including submission to an examination and clearance by Carrier's physician under Rule 52, *18*. The evidence before the Board supports the Organization's Claim that Carrier violated Rule 52 when it failed and refused to pay Claimant sick leave pay for November 11, 1984.

The Claim is sustained for the date of November 11, 1984, but dismissed for dates of September 11, September 23 and October 2, 1984.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 12th day of August 1988.