

The Third Division consisted of the regular members and in addition Referee Edward L. Suntrup when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
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(Missouri Pacific Railroad Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
(GL-10115) that:

1. Carrier violated the Clerks' Agreement when it refused to allow sick leave pay to Clerk M. S. Miller, Kansas City, Missouri, for the dates of August 30, September 6, and 12, 1984.

2. Carrier's action in denying pay for sick leave is in violation of Rule 40 of the Agreement between the parties.

3. Carrier shall now be required to compensate Claimant Miller for eight (8) hours pay at the pro rata rate of \$104.05 per day for each date, August 30, September 6, and 12, 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.

Claims for sick leave pay were filed by the Claimant under Rule 40 of the Agreement for one day in August and two days in September, 1984. After denial of the Claim by the Carrier, this case was docketed before the Board for adjudication.

The Claimant presented three certificates to the Carrier for the dates of August 30, September 6, and September 12, 1984. The first two were signed by Ray W. Hawk, D.C. The third certificate was signed by Ray E. Bording, D.C. The Carrier denied the Claims for two different reasons. First, it contended that the certificates from Drs. Hawk and Bording did not fulfill the requirements of Rule 40(c) because both were not "physicians."

Secondly, the Carrier stated, arguendo, that the certificates from the chiropractors did not factually say that the Claimant was sick on the days in question, but only that the Claimant was under the "chiropractor's care." With respect to this latter point, the Carrier's argues that "Sick Leave is specifically intended for people who are too ill to work. It is not intended for people who choose to make (medical) appointments during normal working hours for their own convenience."

The Sick Leave Rule of the Agreement reads as follows, in pertinent part:

"Rule 40

(d) 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 employe shall be notified promptly of this requirement. This requirement will be determined on an individual case basis and not in the form of blanket instructions.

(i) When employes coming under this Rule 40 are absent for examination and/or treatment to Missouri Pacific Employees' Hospital, other hospital, Missouri Pacific Employees' Hospital staff or other doctors or dentists, including osteopaths and/or chiropractors, leaving the office before closing hours or reporting late in the morning due to illness, the time so absent will be counted as absent account of sickness. When the total time absent account of sickness equals the days specified in Section (a) and/or (b), therefore deduction will be made from the pay of such employes."

In view of the Agreement language the contention by the Carrier that a "reputable physician," as outlined in Rule 40(d) is only a doctor holding an "MD" degree must be rejected. The parties themselves, at Rule 40(i), clearly wished to include under the "physician" nomenclature other types of medical practitioners such as osteopaths and chiropractors and they explicitly so stated. The Board is not free to give interpretations to language which is clear and unambiguous.

Whether the instant Claim should be sustained or denied on merits rests, therefore, on the evidentiary status of the three statements provided by the two chiropractors for the three days in question. The Board has closely studied these statements, as well as the language of Rule 40. The Rule clearly provides Sick Leave benefits in the event of absence from work for the sake of an "examination" by a doctor, as provision 40(i) stipulates. The certificate provided by Doctor Bording for September 12, 1984, reasonably satisfies the Claimant's request for sick leave pay for that day. The certificate states that the Claimant was at that doctor's office on the day in question. In his request for pay, the Claimant states that he had visited a "pri-

vate doctor and (was) sick at home." For the other two days the Claimant states the same thing on his request for pay form: He was off to "visit (a) private doctor & sick at home." The doctor's certificates verifying that visits to the doctor had been made on those days were signed by the attending chiropractor. While the Carrier argues that the signed slips do not say that the Claimant was actually in the doctor's office, but only under the doctor's care, there is no evidence of record to permit the Board to assume or conclude that the certificates were provided to the Claimant under any other conditions. The Carrier then argues that if the Claimant went to the doctor's office on these days he did so for his own convenience and was not really sick. The record only permits the conclusion that the Claimant went to the doctor for an examination and/or treatment as required by Rule 40(i). The evidence does not permit conclusion that the Claimant did so because he was not sick and/or for his own convenience. On the merits, the Claim must be sustained.

We note that in its Submission to this Board, the Carrier attached a copy of a Resignation and Release executed by the Claimant on August 25, 1986, after the Claim had been filed with the Board. The document provides that Claimant's receipt of a financial consideration from the Carrier was "accepted as full and complete release of and from any and all manner of Claims and demands now or in the future." Such document, if genuine, would bar any financial recovery by the Claimant in this case.

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 10th day of August 1989.