

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31424
Docket No. CL-31103
96-3-93-3-143

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

PARTIES TO DISPUTE: (Transportation-Communications International
(Union
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(Chicago, Central and Pacific Railroad Company

STATEMENT OF CLAIM: "Claim of the System Committee of the
Organization (GL-10938) that:

- (1) Carrier violated the Agreement when it made unauthorized deductions from the wages of S. Bulick, B. Benson, B. Colfield, L. O'Connell, J. Dean, D. Goldsberry, L. O'Keefe and M. Rowland.
- (2) Carrier shall now reimburse Claimants in the amount claimed, due to a violation of the Clerks Agreement.
- (3) Carrier shall now be required to allow future Health Incentive payments, in accordance with Rule 10 of the Agreement, to extra 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 employee or employees involved in this dispute are respectively carrier and employee 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.

The Chicago, Central and Pacific Railroad Company is a shortline railroad formed in 1985 by Mr. John Haley with a portion of trackage purchased from the Illinois Central Railroad. As part of the purchase agreement, the newly formed Carrier was required to hire Illinois Central employees and abide by applicable collective bargaining agreements. The IC\TCU Agreement contained traditional sick leave provisions allowing employees to be absent from work due to illness and receive payment for up to ten of those days each year.

During subsequent negotiations, the "Sick Leave Rule" was changed to a "Stay Healthy Rule." Paragraph (a) pertinent to this dispute, states the following:

"(a) Employees that work (or are available to work) each and every day of their regular assignment in a calendar quarter shall receive a health incentive payment equal to two days pay at the regular rate. Such payment shall be made within 30 days of the close of the applicable calendar quarter."

It is undisputed that for some seven years, from December 1985 to July 1992, Carrier applied the Stay Healthy Rule to both regular and Extra Board employees. On July 1, 1992, however, the instant claim arose when Carrier's Manager of Stations issued the following directive:

"In the future, any clerk on a furlough status working extra does not get incentive."

The Organization protested the Carrier's unilateral decision, noting that each of the Claimants was available for call as extra employees, such employees had "always" received the "wellness" benefit, and they were therefore "entitled" to receive such payments under Paragraph (a) of Rule 10. Carrier denied the claim, stating that it had made an "error" in applying the health incentive to extra employees for the past seven years.

Carrier insists that the Parties' "intent" regarding application of Rule 10 (a) must flow from the language Rule 9(a) which defines "regularly assigned" employees as those individuals who have "a fixed starting time and rest days," thereby excluding Extra Board employees such as the Claimants. The Organization maintains that the intent of the Parties is best demonstrated by their consistent application of Rule 10 (a) for seven years, not by a latter day reinterpretation by Carrier.

There is some latent ambiguity in Paragraph (a) of Rule 10, since it speaks in terms of employees who work "their" regular assignment, rather than "a" regular assignment. Interpretation of ambiguous contract language is grist for the mill of this Board and the guiding principles are well established. When language is clear and unambiguous, even a long-standing past practice ordinarily must yield, but when the language is not so clear, the consistent, unequivocal, open, long-standing conduct of the Parties is often taken as convincing evidence of their mutual intent. Based upon the ambiguity of Rule 10 (a) on the disputed point and the undisputed evidence of seven year's past practice, this claim must be sustained.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 21st day of March 1996.