

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 32461  
Docket No. CL-32970  
98-3-96-3-351**

**The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.**

**PARTIES TO DISPUTE: (**  
**(Transportation Communications International Union**  
**(CSX Transportation, Inc. (former Chesapeake and**  
**( Ohio Railway Company)**

**STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Organization (GL-11228) that:**

**A) Carrier violated the terms and conditions of the Clerical Agreement and Memorandum thereto when it failed and refused to allow the beneficiary or spouse (whichever the case may be) of Mr. Edward Cunningham, Jr., ID 613830, payment for all unused and accumulated sick leave.**

**B) Carrier shall now arrange to properly allow Mr. Cunningham’s widow, Ms. Karen Cunningham or his designated beneficiary all unused and accumulated sick leave in his sick leave bank.”**

**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 were given due notice of hearing thereon.

The Organization filed a claim after the death of a Yardmaster for his unused and accumulated sick leave which he had been required to bank under Rule 60 of the Clerical Agreement. The Organization pursued this claim arguing that Section 3 mandated the Claimant to maintain a 30 day sick bank as a credit when promoted or transferred to positions outside the Clerical Agreement, but available upon return. Had the Claimant returned from the Yardmaster position to clerical service, these accumulated days which were banked would have been his. The Organization argues that in this instant case, where the Claimant died, his days belong to his beneficiary, as in Section 4 which states in pertinent part:

“... Should an employee who has accumulated unused sick leave die, the unused sick leave will be paid to such beneficiary as may have been designated, or in the absence of such designation, the surviving spouse or children of his estate, in that order of preference. . . .”

The position of the Carrier is that it violated no Agreement Rule due to the fact that these Rules apply to clerical employees and that when the Claimant died, he was working as a Yardmaster. It serves no useful purpose to set forth the full facts and arguments of this case. The on-property record of the Carrier was particularly underdeveloped resting solely upon one assertion that the language of the clerical Agreement did not apply to a Claimant who died while a Yardmaster.

As an important preliminary point, the Carrier's ex parte Submission includes countless new arguments and issues never raised on the property. Nowhere does the Board find discussion of the word “employee” related to Rule 60, Section 4, let alone even passing reference to Rule 1, Scope. The Board finds nothing on Rule 22, the C&O Yardmasters' Agreement, Addendum 9 on supplemental sickness benefits or any arguments whatsoever on employees benefitting from two Agreements simultaneously. Worse, the Carrier even brings to the Board, for the first time, an issue emphasized in its Submission about past practice. The Carrier argues that:

“Numerous of those promoted clerical employees have retired or died while in promoted status and this case is the first ever progressed by the Organization.”

The Carrier advocate now argues before the Board these and other issues which have no basis in the record as argued on the property. These new arguments must be ignored by the Board. They were not discussed, alluded to or presented when the dispute was raised on the property. It is a firmly established principle of the National Railroad Adjustment Board, codified by Circular No. 1 and at the base of numerous Awards that this Board cannot accept arguments which were not handled on the property.

On merits, the Board carefully studied the prevailing Agreement and language governing this dispute. Rule 60, Section 4 was written with clear language supporting the Organization's position. The Carrier's sole position is that upon death, the Claimant was under a separate Agreement. There is nothing in this Rule that suggests it was the parties' intent that employees forfeit such death benefits.

We studied prior Awards submitted and find most involve other language (Fourth Division Awards 4820, 1680; Public Law Board No. 3775, Award 60) and circumstances (First Division Award 24158, Third Division Award 28336). While some prior Awards are similar (Third Division Award 32145, Special Board of Adjustment No. 1011, Award 48; Public Law Board No. 132, Award 30), they are not on point with the provision's language herein considered. Although the Board finds Third Division Award 32163 relevant, in that case another Carrier asserted a past practice while the dispute was on its property. No such assertion exists in this instant claim.

Accordingly, the language of the Clerical Agreement, particularly Section 4 of Rule 60 which states that "should an employee who has accumulated unused sick leave die, the unused sick leave will be paid . . ." must hold. Nothing in the on-property record supports an interpretation suggesting that an employee with accumulated unused sick leave who dies while employed outside the clerical ranks should be penalized with benefit forfeiture. Nothing in the language suggests that this "earned" and "banked" accumulated asset belongs to the Carrier under this instant record (see Third Division Award 29190 with Dissent and Court Order, as well as Third Division Award 30416). Under this record and Rule, the 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 January 1998.**