

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36998
Docket No. MS-38036
04-3-03-3-472

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

(Donald D. Dolan
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company

STATEMENT OF CLAIM:

- “1. Carrier violated the TCU Agreement, expressly Rules 10 and 42, but not limited thereto, when it failed to grant sick leave allowance as provided normally to active employees of the Carrier, while Claimant was on a full-time position with the Transportation Communications Union.
2. Carrier shall now be required to grant Claimant ten (10) days' sick leave allowance for each of the sixteen (16) years commencing with 1987 through and including January 1, 2002, for a total of one hundred sixty (160) days sick allowance.”

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 Claimant established seniority with the Carrier on August 17, 1965. On September 1, 1986, the Claimant accepted a full-time position with the Transportation Communications International Union. On July 31, 2002, his tenure on a full-time position with Organization was terminated.

On September 27, 2002, the Claimant made request for sick leave allowance under provisions of Union Pacific Railroad Agreement, effective October 16, 1993 - Rules 10 and 42.

Rule 10 stipulates in pertinent part:

“(a-3) Employees accepting full-time positions with the Transportation Communications Union shall be considered as in the service of the Company and on leave of absence, and shall upon release from such service be entitled to all service benefits under the control of the Company, normally accruing to active employees, and shall have the privilege of exercising seniority on any position bulletined during their absence or exercising seniority rights in accordance with the provisions of Rule 13.”

Rule 42 provides in pertinent part:

“Section 1. There is hereby established a non-governmental plan for sickness allowance supplemental to the sickness benefit provisions of the Railroad Unemployment Insurance Act as now or hereafter amended. It is the purpose of this sick leave rule to supplement the sickness benefits payable under the Act and not to replace or duplicate them.

(a) An employee who has been in the continuous service of the Company for the period time specified will be granted an allowance as set forth below for time absent on account of sickness or injury:

(a-3) Upon completion of three (3) years of service, a total in the following year of ten (10 days' pay."

Request for sick leave allowance under provisions of Rules 10 and 42 was denied and timely appealed.

The Claimant insists that because he accepted a full time position with the Organization; was properly on Leave of Absence; and, because he was released from the service of the Organization and, thereafter, displaced on a position consistent with his seniority, he must, then, be entitled to all other benefits accruing to active employees as stipulated Rule 10 (a-3).

The Claimant dissents with the Carrier's position that he is ineligible for sick leave during his Leave of Absence and tenure as a full-time union official because benefits sought were provided him in his capacity as a Union Officer. He contends that benefits accruing to him while functioning in his official capacity with another entity are not relevant to his entitlements under the labor Agreement with the Carrier. He argues that the language is clear and unambiguous, and the architects of the Agreement could have, but did not see fit to carve out an exception that disqualifies full-time union officials from benefits that accrue to all other active status employees.

Position taken by the Carrier is in sharp contrast to that of the Claimant. The Carrier argues that claim was not handled in the usual manner, and is, therefore, procedurally defective. As evidence, it points out that the Claimant failed to conference claim on property – suggesting, instead, a date and location different from that proposed by the Carrier.

The Carrier, further, maintains that the Claimant supplied no Agreement support for his claim; his demand for sick days under these circumstances is a novel one, and contrary to long standing past practice on the property. No other employee returning from Leave of Absence, the Carrier points out, has ever made a demand for sick leave, purportedly, accrued while in Leave of Absence status; and if the Claimant interpretation of the Rule is correct, he would be entitled, also, to 77 weeks of vacation, and nine weeks of personal leave days – or a total of 1.7 years of

“accrued” paid absences. Allowing accrual of benefits to an employee in Leave of Absence status, as the Rule is construed by the Carrier, simply permits that employee to return to active status without interrupting years of service.

The Claimant’s benefits, according to the Carrier, were not adversely affected while in Leave of Absence status. He was protected by Rule 10 – Seniority Status, Rule 42 – Sick Allowance, and the National Vacation Agreement. It is the Carrier’s contention that the Claimant is not desirous of being made whole, but is, rather, attempting to double-dip and to gain a more favorable position than contemplated by the Rules.

Turning to the merits of this dispute, the Board is well acquainted with the Rules in question and the concept of sick leave allowance. But, a careful reading of the Rules - Rule 42 – Sick Leave Allowance, in particular - has contributed, greatly, to our understanding as to how this dispute must be resolved. We agree with the Carrier that the Claimant failed to reach the burden of proof threshold in showing the Carrier violated the labor Agreement. It is more than clear to the Board that the purpose of Rule 42 – Sick Leave Allowance was to protect those employee benefits that may have been at risk, not to duplicate nor replace those that remained in full effect.

Rule 42 – Sick Leave Allowance reads in pertinent part:

“ . . . It is the purpose of this sick leave rule to supplement the sickness benefits payable under the Act and not to replace or duplicate them.”

We agree with the Carrier that acceptance of the Claimant’s construction of the Rule results in duplication of benefits both with respect to the Act as well as the National Vacation Agreement.

The Board, further, agrees with the Carrier that the Claimant’s interpretation of the Agreement would lead to an absurd result. In the Claimant’s case, he would recover 1.7 years of paid benefits - which he did not lose. No other employee, since the Agreement was signed, has made such an unusual interpretation of the Rules or attempted to recover benefits - not lost.

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AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 18th day of May 2004.