

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37128
Docket No. CL-38026
04-3-03-3-403

The Third Division consisted of the regular members and in addition Referee Martin H. Malin when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(National Railroad Passenger Corporation (Amtrak))

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-13002) that:

The Carrier violated the Amtrak-Northeast Corridor Clerks Rules Agreement on September 12, 2001, when it put Lead Ticket Receiver, Kent Green, in harms way by paying him with a sick day (Pay code 11) that he did not want to be charged and singled him by not paying him the correct (Pay code) as his fellow non-partial exempt coworkers had requested to be paid at and were then paid at, straight time (Pay code 01).

Claimant Kent Green now be made whole for the sick day charged one (1) sick day (as a credit) back to his sick day allowance.

On September 11, 2001 Terrorists struck the city of New York by bombing the World Trade Centers Two (2) Towers. The mayor of New York in several conferences advised all city residents and those who commute to the city for their employment (not to come to the city) if they do not have to, as the city would be shutdown for the next few days. Commuter trains were not running at normal frequency either on September 11 or September 12, 2001. The Carrier paid employees who could not get into the city on September 11 and 12 at straight-time or unless the employee requested sick, personal or vacation day. Claimant made no request to be paid as a sick day. The Carrier charged him a sick day anyway, yet Claimant's non exempt “Partial Exempt Co-Workers were all paid at straight time due to not being able to make it

into the city, were afraid, etc. The Carrier's Pay-Punch Raw Report reflects this information to be true. Claimant's duly accredited representative requested from the Claimant's supervisor, B. Boyce, for him to be paid as other non-exempt co-workers had been paid at straight time (Pay code 01). B. Boyce advised the representative he would pay him if his supervisor would allow him to do so and would get back to the representative, he did not.

When the Carrier paid Claimant at (Pay code 11) sick-day this put Claimant in a precarious position:

- (a) He could be charged with falsely claiming to being sick.
- (b) He would also lose a sick day from his day allotment of sick days.
- (c) The Carrier could then hold such charged sick day against him at a later date and then charge him with their new policy "National System Attendance Policy".
- (d) Claimant only wants to be paid in accordance with his other co-workers (non-partial exempt employees) at straight time. He was not sick and is not stating in any uncertain terms that he was (sick).

The Carrier is in violation of rule/s but not limited to:

Rule 4-1-1 (Sick Leave) Paragraph (G)
Article XII - Quality of Service (New)
Rule 5-E-1 - Forty (40) Hour Work Week and Other Rules

This claim has been presented in accordance with Rule 7-B-1 of the NEC-TCU Agreement and with the new change, from the Off-Corridor Clerks Rules Agreement, Rule 25 and should be allowed and accepted as presented."

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.

On September 12, 2001, the Claimant did not report to his job at Penn Station, New York, because of the terrorist attacks of the previous day. During handling on the property, the Carrier asserted that the Claimant called in on September 12 and requested a sick day and that the Claimant subsequently admitted that he called in and requested a sick day. The Claimant submitted a written statement which stated that he did not report for work on September 12 because the Mayor of New York had asked that people not come into the city that day and because he did not feel comfortable reporting for work in light of the prior day's terrorist attacks. Significantly, in his statement, the Claimant did not dispute that he called in and requested a sick day. The Claimant and the Organization maintain that it was unfair to charge the Claimant a sick day for September 12 when subsequently the Carrier decided to pay employees who were absent on September 12 and who had not requested sick or vacation days to cover their absences. A general argument of unfairness, however, provides no basis for a claim. The Organization simply failed to specify any Rule that precludes the Carrier from granting an employee's request for a sick day and then charging him a sick day in accordance with that request. The claim lacks merit.

The Organization also contends that the claim must be sustained on procedural grounds. After denial of the initial claim, the District Chairman docketed an appeal with the Division Manager Labor Relations and requested a conference. The conference was attended by the District Chairman and the Vice General Chairman. The Division Manager Labor Relations denied the appeal in a timely manner but the Organization contends that the denial was ineffective because it was sent to the Vice General Chairman when it should have been sent to the District Chairman.

The only Rule quoted on the property, Rule 25(b) provides, in relevant part:

“ . . . If the officer to whom the appeal is made fails to render a decision in writing within sixty (60) calendar days of date of appeal, the claim or grievance shall be allowed as presented. . . .”

Nowhere does Rule 25 provide a basis for sustaining a claim where the officer to whom the appeal is made renders a decision within 60 days but sends it to one of two Organization representatives who attended the appeal conference, even if one assumes that the decision should have been sent to the other representative.

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 25th day of August 2004.