

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 37129
Docket No. CL-38041
04-3-03-3-395

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

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

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-13000)
that:

- (a) The Carrier violated the Amtrak Clerks’ Rules Agreement particularly Rule 19, Sick Leave, when on February 15, 2002 Claimant retired from service with the Carrier and has not been compensated for unused Sick Leave which she had accumulated over the years while working as a clerk.
- (b) Claimant has 30 days sick leave banked when she was promoted and should now be paid 15 days pay at the rate of pay of the last position she worked on account of this violation.
- (c) This claim has been presented in accordance with Rule 25 and should be allowed.”

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 entered the Carrier's service as a member of the Clerks' craft. On May 16, 1987, she was promoted to a management position. She retained her Clerk's seniority and 30 days sick leave which she had accumulated in her Clerk's position. That sick leave remained in a bank, because the Claimant was unable to use it while in the management position, but if she had returned to the Clerks' craft, she would have been able to draw on it. The Claimant retired in February 2002.

The instant claim seeks payment for 15 days' sick leave under Rule 19(d) which provides:

"Employees resigning to accept an annuity under the Railroad Retirement Act will be allowed 50 per cent of their accumulated unused sick leave. Employees voluntarily leaving the service for other reasons and those dismissed for cause will forfeit any unused sick leave."

The Carrier contends that the Claimant is not entitled to the benefits of Rule 19(d) because she retired from a position that was not covered by the Agreement. The Carrier's position has been rejected by Boards considering comparable cases. See, e.g., Third Division Award 32461; Special Board of Adjustment No. 1137, Award 13. We find those Awards persuasive and conclude that the Claimant was entitled to be paid for the 15 sick days. Payment shall be at the rate in effect at the time the sick leave was earned.

AWARD

Claim sustained in accordance with the Findings.

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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 25th day of August 2004.