

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29548
Docket No. CL-30150
93-3-91-3-594

The Third Division consisted of the regular members and in addition Referee Hugh G. Duffy when award was rendered.

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

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood (GL-10631) that:

1. Carrier violated Rule 9, Attachment D (as provided in Article III of the mediation Agreement dated April 15, 1986, Case A-11569), and other related Rules of the Agreement when it failed to compensate Claimant Helena Schaub at the higher, rate progression wage effective January 12, 1990.
2. If Carrier has not already done so, it shall now immediately raise Claimant's rate from the 85 percent rate to the 90 percent rate, in accordance with Section I, paragraph (d) of Attachment D of the Agreement.
3. Carrier shall now compensate Claimant the amount of money she would have earned had Carrier raised her rate to the 90 percent rate effective January 12, 1990; i.e. the difference between that what she was compensated between January 12, 1990 and the date her raise was or is raised to the 90 percent rate and that of the 90 percent rate beginning January 12, 1990."

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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.

This case presents the question of whether an employee on medical leave for corrective surgery is on a "voluntary absence" under Article III, Section 1(i) of the Mediation Agreement A-11569 dated April 15, 1986.

Article III - Rate Progression reads in pertinent part as follows:

"(i) Any calendar month in which an employee does not render compensated service due to furlough, voluntary absence, suspension or dismissal shall not count toward completion of the sixty (60) month period."

Claimant was off on a medical leave for foot surgery from May 11, 1989, to March 1, 1990. The Carrier refused to count this time for normal rate progression purposes, arguing that it constituted a "voluntary absence" under the Agreement. The Organization filed the instant claim, asserting that medical leaves of absence were not contemplated as voluntary absences under the Agreement.

We find the Organization's arguments persuasive that Third Division Awards 24857 and 27952 are controlling precedent in this matter. In Award 24857 the Board held:

"This Board cannot agree with the Carrier that any absence which it does not impose is necessarily a "voluntary absence" within the meaning of Article VIII, Section 1(c), nor does it believe that the precedent cited supports such a proposition. Giving words their ordinary and accepted meaning this Board is unable to conclude absence due to legitimate injury or illness is a voluntary absence for purposes of the cited section. Accordingly, Claimant had completed the twelve month period when he returned to work in December and should have been paid at the 100% rate thereafter."


We find Third Division Award 26294 cited by the Carrier readily distinguishable in that the Board found in that case that the Carrier had proven a long-standing practice on the property of not counting such absences for purposes of computing entry-level rates, and that the Agreement in question provided that local Rules or practices would continue to apply for employees hired before January 1, 1982.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 9th day of March 1993.