Award No. 5750
Docket No. 5504
2-B&O-SM '69

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee A. Langley Coffey when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 30, RAILWAY EMPLOYES' DEPARTMENT, AFL - CIO (SHEET METAL WORKERS)

THE BALTIMORE AND OHIO RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That Article 8 of the National Vacation Agreement of December 17, 1941, as amended, was violated when the Baltimore & Ohio Railroad refused to grant four (4) weeks' pay in lieu of vacation earned in 1965 to Sheet Metal Worker Sampson Perkins, who terminated his employe relationship on April 5, 1966.

2. That accordingly, the Carrier be ordered to compensate Sheet Metal Worker Sampson Perkins four (4) weeks' pay at the applicable pro rata rate.

EMPLOYES' STATEMENT OF FACTS: Sheet Metal Worker Sampson Perkins, hereinafter referred to as the Claimant, was regularly employed as such by the Baltimore and Ohio Railroad Company, hereinafter referred to as the Carrier, and regularly assigned to the first shift at Washington, Indiana Car Shop with workweek of Monday through Friday, rest days Saturday and Sunday.

On September 20, 1965 the Carrier served notice on the Employes that the Washington, Indiana Car Shop would be discontinued effective with the close of business on December 27, 1965 in accordance with Article I, Sections 2 & 4 of the September 25, 1964 Agreement (Mediation Agreement Case No. A-7030), and a copy of said Notice is attached hereto and identified as Exhibit "A."

Claimant was furloughed effective December 27, 1965 as a result of the discontinuance of the shop, and under date of December 28, 1965, Claimant requested severance pay in accordance with the provisions of Article I, Section 7, of the September 25, 1964 Agreement, and a copy of Claimant's request is attached hereto as Exhibit "B." On April 5, 1966, Claimant was paid his severance pay; however, in order to receive the severance or separation allowance, Claimant was compelled by Carrier to sign a letter of resignation which also stipulated the amount of severance pay allowed, and a copy of the resignation letter is attached hereto and identified as Exhibit "C."

"It would have been a simple matter, had the parties to this Agreement desired Article IV of the 1954 Agreement to have been a determining factor, to have clearly stated so in their definition of available set out in the note of Section 3, Article III of the 1960 Agreement. They did not."

What the RED proposes to this Division is that it order the Compnay to now recompute and recalculate the separation allowances already made:

The Carrier submits the manifest impropriety in the request now made before this Division. In effect the Committee requests that the separation allowances already calculated, computed and accepted be now recalculated and recomputed with additional benefits to be awarded the named individuals. This is a most improper request; it is contrary to the provisions of the negotiated working agreements.

In an Arbitration Proceeding on this property (121765) (BRC v B&O) the Board of Arbitration ruled on a question as to the propriety of a request by an individual for a recalculation of lump sum separation allowance. The Board of Arbitration with Chairman Francis J. Robertson sitting ruled against such a recalculation that:

"* * * the scheme of the Agreement as a whole indicates that in the case of separation allowances there was a note of finalty intended * * * this would be the logical approach to the situation since it is apparent that the employee electing to accept the separation allowance would be presumed to have intended to completely sever his relationship with the carrier with no further strings attached. This intent is clearly expressed in the certificate and receipt which (the individual) signed upon receipt of his separation allowance. * * *."

There is no basis whatever for a recomputation of the separation allowance involved in the instant case.

CARRIER'S SUMMARY: The Carrier submits that the individuals involved in Cases 7614, 7615 and the instant docket, 7658, have received all the protective benefits to which they are entitled. They are not now entitled to any additional compensation.

The Carrier submits that the instant claim is not valid at either Parts 1 or 2. The Carrier submits that the instant claim is expressly not supported in the Working Agreement. The Carrier respectfully requests that this Board so rule and that this claim in its entirety be declined.

(Exhibits not reproduced.)

FINDINGS: The Second 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 were given due notice of hearing thereon.

The Division, upon the whole record, and having fully examined and considered the submissions in the pending Docket, and having reexamined and reconsidered the submissions in companion dockets 5477 and 5476 covered by Awards 5667 and 5668 respectively, and being otherwise well and sufficiently advised in the premises, does find:

That Awards 5667 and 5668 should be and the same are hereby readopted and reaffirmed in principle and are, therefore, controlling in this dispute.

AWARD

Claims (1) and (2) are disposed of in accordance with the above and foregoing findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June, 1969.

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