

The Second Division consisted of the regular members and in addition Referee James F. Searce when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the United States and
Canada
(Fruit Growers Express Company

Dispute: Claim of Employees:

1. That under the controlling agreement, the Fruit Growers Express Company failed to compensate the 26 Claimants named below, the balance of the 1978 back pay "special allowance" as agreed under Section 3 of Mediation Agreement dated January 17, 1979.

R.L. Smith	I.F. Ingram	R.C. Bogle	R. Dobbins
R.W. Liller	C.R. Hicks	R.E. Harris	R.M. Evans, Jr.
D.A. Kerner	H.F. Davis, Jr.	K.E. Rawls	K.A. Bayliss
R.A. Eaton	W.A. Wiser	R.L. Fincham	L. Osborne
J.M. Head	A. Saahir	R.L. Brooks	W. Daniels
R.E. Sabb	G.R. Fletcher	B.E. Chittum	
L.L. Lockhart	M.A. Muhamad	R.M. Campbell	

2. That accordingly, the Carrier be ordered to compensate Claimants named herein the remaining amount owed them when they left the service of the Carrier.

Findings:

The Second 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 waived right of appearance at hearing thereon.

This dispute deals with the application of a "Mediation Agreement" signed in February of 1977 (to be effective January 1, 1979) insofar as certain aspects of compensation was concerned. Of specific importance was Article I, Section 3 of such Agreement which stated that:

"Compensation for services in 1979 will include a special allowance to be applied on each of the remaining pay periods in the calendar year 1979, to each employee named on the attached statement, in an amount determined by

dividing the total amount shown for each such employee by the number of such pay periods."

While this provision cited "employee(s) named on the attached statement...", no such list was ever appended. It is conceded that this Agreement was effected in recognition of the fact that the represented employees had not received a general wage increase since June 1, 1977. The parties are at variance as to the nature of the compensation referred to in Section 3: per the Organization it was retroactive pay for 1978 to be distributed over the 1979 pay period; according to the Carrier, it was a compromise settlement as part of the Mediation Agreement and was prospective in nature. The Carrier points to the opening words in Section 3 -- "compensation for services in 1979..." The Carrier concedes, however, that the amount to be meted out in 1979 would equal the amount sought by the Organization as 1978 back pay.

In the process of working out the Mediation Agreement, a question apparently arose as to the application of Section 3 where employees who died, retired or who were furloughed during 1978 or 1979 were involved. An undated, unsigned but apparently acceptable memorandum was executed which provided that employees in the above-stated three (3) categories would be afforded the full measure of such compensation as if they had worked the entire 1979 period.

The instant dispute arose over the Carrier's refusal to apply Section 3 to employees who resigned (quit) or were terminated during 1979. In essence, the Claimants herein are demanding that the benefits of Section 3 be afforded them the same as for employees who retired, were furloughed or who died during 1978 or 1979. The Organization cites Rule 21(b) as controlling:

"(b) Employees leaving the service will be furnished with a time ticket covering all time due within twenty-four (24) hours where time tickets are issued and within forty-eight (48) hours at other points, or earlier when possible."

Essentially, the Organization is contending the pay was earned in 1978 and is owed at the time the Claimants' services ceased in 1979.

While we find Article I, Section 3 of the Mediation Agreement less than clear and unambiguous and certainly not well-detailed as to its coverage, it would appear to contemplate the presence of the recipients of such pay as employees "... on each of the remaining pay periods in the calendar year 1979...". An exception to such literal interpretation was effectuated by the "memorandum" for those employees who would not be -- or who could not be -- available during the aforementioned pay period for the specific reasons of death, retirement or furlough. It is a well-established principle that where the parties have seen fit to specify an exception or exceptions to a provision of a collective bargaining agreement, others are without authority to establish other exceptions. And, the fact that the parties determined to establish the exception set out in the memorandum gives impetus to the conclusion that the norm would be employees who were in active status throughout the 1979 period. In essence, employees who unilaterally chose to terminate their service or who were terminated for cause fell in neither the norm nor the exception. We must also conclude that the

nature of the compensation increment referred to in Article I, Section 3 is what it is stated to be therein -- a "special allowance" and not earned back pay as contended by the Organization.

Finally, in order for Rule 21(b) to be applicable, entitlement to the disputed compensation must be established; it has not.

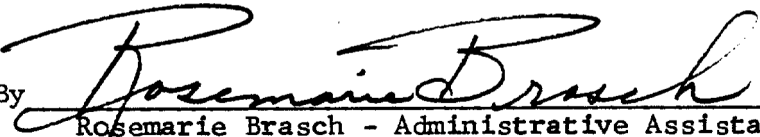
A W A R D

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 13th day of July, 1983.

