

The Second Division consisted of the regular members and in addition Referee George S. Roukis 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 Carman H. A. Parker the back pay "special allowance" as provided for under Article I, Section 3, of the Mediation Agreement dated January 17, 1979.
2. That accordingly, the Fruit Growers Express Company be ordered to compensate Carman H. A. Parker the amount due as "special allowance" covering the period from January 1, 1978 up to October 30, 1978, the date he was dismissed from service.

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 employes 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.

The Organization contends that Claimant is entitled to the special allowance provided by Article I, Section 3 of the January 17, 1979 Mediation Agreement for the period January 1, 1978 through October 30, 1978. Although it recognizes that he was dismissed from service on October 27, 1978 and then reinstated on June 16, 1980 in accordance with an agreement, dated, June 11, 1980, it argues that the reinstatement agreement does not deprive him of this compensatory special allowance since the allowance is predicated upon service he performed during the first ten (10) months of calendar year 1978. It asserts that the aforesaid provision of the January 17, 1979 Mediation Agreement does not require as a qualifying precondition that an employe must work during the 1979 calendar year for this allowance.

Carrier contends that the special allowance was to be provided only to those employes who had worked during the 1979 calendar year. It asserts that the Organization was aware of this prerequisite requirement two (2) months before Claimant's reinstatement agreement was negotiated, and Claimant, by definition and voluntary acquiescence, unconditionally waived any claim to past compensation. It avers that the June 11, 1980 reinstatement agreement specifying

the terms of his reinstatement clearly spelled out that his return was premised upon the explicit understanding that he would not receive back pay or any other form of compensation for the time he was out of service.

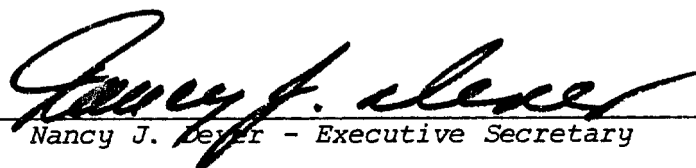
In our review of this case, we agree with the Carrier that Claimant is not entitled to the special allowance. By the terms of the June 11, 1980 reinstatement agreement, Claimant agreed to waive back pay or any other claim to compensation and his agreement was an all inclusive waiver. Moreover, and consistent with our prior determination in Second Division Award No. 9555 involving the same Organization and the same Carrier, we stated that Article I, Section 3 of the 1979 Mediation Agreement contemplated the presence of employees during the 1979 calendar year and noted that the only exceptions provided were for those employees who were not available during the 1979 calendar year for the specific reasons of death, retirement or furlough. We also pointedly noted that employees who unilaterally terminated their service or were terminated for cause would not be considered an exception or subject to the norm of coverage. In the instant case, Claimant not only voluntarily relinquished any claim to compensation, but he would not be eligible for the special allowance by virtue of the intended coverage and application of Article I, Section 3 of the January 17, 1979 Mediation Agreement. Second Division Award No. 9555 is controlling.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 13th day of June, 1984