

The Second Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

(Sheet Metal Workers International Association
Parties to Dispute: (
(Southern Pacific Transportation Company (Western Lines)

Dispute: Claim of Employees:

1) That the Carrier has arbitrarily withheld \$100.00 from the wages earned by claimant K. E. Chrestensen for the first pay period of December 1983, payroll check received on December 23, 1983, and withheld \$100.00 from wages earned by claimant for first pay period of January 1984, payroll check received January 25, 1984, without consent of claimant.

2) That the Carrier violated Rule 38 of the current Motive Power and Car Department Agreement.

3) That the Carrier violated Rule 120 of the current Motive Power and Car Department Agreement as periodically revised by National Agreements governing rates of pay, current National Agreement signed December 11, 1981.

4) That the Carrier violated Rule 28 of the current Motive Power and Car Department Agreement.

5) That the Carrier stop further arbitrary withholdings of wages earned by claimant.

6) That all wages arbitrarily withheld from claimant by the Carrier beginning December 23, 1983 and thereafter, be refunded to claimant plus interest at the rate of 10% per annum.

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 facts underlying this dispute are set forth in Special Board of Adjustment No. 570 Award No. 637. Briefly summarized, those facts show that the Carrier and Organization entered into a Memorandum of Agreement dated November 1, 1979 which abolished two Sheet Metal Worker positions at Car Shop No. 9 at Sacramento, California and created two such positions at a new facility located at Roseville, California. The Memorandum of Agreement also gave certain protective benefits to those employees who transferred from Sacramento to Roseville.

Claimant was one of the employees transferred from Sacramento to Roseville. However, on August 10, 1981, Claimant successfully bid into a Sheet Metal Worker position at Sacramento and remained in that position until August 5, 1982 when he displaced a junior employee at Roseville. On August 30, 1982, Claimant was himself displaced by a senior employee and was thereafter furloughed. Nevertheless, Claimant was paid certain protective benefits until March 1983.

Special Board of Adjustment No. 570 Award No. 637 concerned the issue raised by the Organization of whether the Carrier properly computed the benefits paid to Claimant. The issue raised by the Organization specifically concerned what period of time should be used for the measuring period for the computation of those benefits. The Carrier, on the other hand, contended that Claimant was not entitled to protective benefits since Claimant voluntarily relinquished his position at Roseville in August 1981. As shown by Award No. 637, the Special Board denied the claim and concluded, in basic agreement with the Carrier, that Claimant was not entitled to benefits since he was not adversely affected by his initial assignment to Roseville within the meaning of Paragraph 4 of the Memorandum of Agreement.

As noted in Award No. 637, notwithstanding the Carrier's position therein that Claimant was not entitled to benefits, Claimant nevertheless received those benefits until March 1983. In its Submission in this matter, the Carrier asserts that the payments were made as a result of a timekeeping error. Thereafter, commencing with the first pay period in December 1983, as reflected in Claimant's payroll check received December 23, 1983, Carrier began withholding \$100.00 per pay period in an effort to recoup the over-payments previously given. The recoupment action by the Carrier is the crux of this Claim.

The Carrier's initial position is that this Board does not have jurisdiction over this matter since a very similar claim was filed with Special Board of Adjustment No. 570 as Case No. 841. Indeed, our review of the record herein shows that such a claim was filed. However, we do note that in Case No. 841, the Carrier contested the jurisdiction of that Board as well. See Carrier Exhibit V at pp. 11-13. The argument made by the Carrier in Case No. 841 was that the claim concerning recoupment was duplicative of the issue raised in Case No. 751 (which ultimately became Award No. 637) and involved the splitting of a grievance (the same argument made herein). Under the circumstances of this case, we find that the Carrier cannot have it both ways. The jurisdictional positions taken in the two cases are mutually exclusive and

would, if successful, leave Claimant without a forum to protest the Carrier's actions - actions that were created by the Carrier's own admitted error. Additionally, we do note that the Claim raised by the Organization in this case concerns alleged violations of Rules 28, 38, and 120 of the current Motive Power and Car Department Agreement as revised, and not the 1979 Memorandum of Agreement dated November 1, 1979 under which the similar claim was raised before the Special Board in Case No. 841. Obviously, we have jurisdiction under the Controlling Agreement and our decision herein concerns only the provisions of that Agreement.

With respect to the merits of the Claim, the Board has long held that, barring language in an agreement prohibiting recoupment, a Carrier can recoup overpaid sums of money. See, Third Division Awards Nos. 15067; 9117. The Organization has pointed to no such limited language in the Controlling Agreement involved in this dispute. The Carrier was therefore entitled to make the appropriate deductions to recoup the overpaid amounts.

The Organization's argument that the Carrier was untimely in its actions because it waited until December, 1983 to begin making the deductions is similarly without merit. The time limits for the presentation of grievances (Rule 38) is not applicable to the kinds of deductions made by the Carrier in this case. See Third Division Award No. 16920. We similarly find the argument that the doctrine of laches applies to this matter is without merit. Under these facts, we do not find that the Carrier waited an unreasonable amount of time from when it became aware of the error and overpayment, that is, from the issuance of Award No. 637 of Special Board of Adjustment No. 570, to begin recoupment. See Third Division Award No. 15067.


In light of our disposition of the Claim, we find it unnecessary to address the Organization's Claim for an award of interest.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Decker - Executive Secretary

Dated at Chicago, Illinois, this 19th day of November 1986.