

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13449

Docket No. 13314

99-2-97-2-87

The Second Division consisted of the regular members and in addition Referee Edward L. Suntrup when award was rendered.

(System Council No. 15

(National Conference of Firemen & Oilers, S.E.I.U.

PARTIES TO DISPUTE: (

(Denver Rio Grande Western Railroad (Union Pacific Lines)

STATEMENT OF CLAIM:

“1. Under the current controlling Agreement Mr. R. V. Lochhead, Laborer, Salt Lake City, Utah was incorrectly compensated at the 75% rate of pay.

2. That, accordingly, the Denver & Rio Grande Western Railroad (Union Pacific Lines) be order to compensate Mr. Lochhead for the difference between 75% and 100% rate of pay, commencing on January 17, 1997 and continuing until settled.”

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 were given due notice of hearing thereon.

On January 25, 1989 the Claimant received a separation allowance of \$30,000.00 from the Carrier. He had worked as a member of the Clerk's craft for some 28 years.

The document accompanying receipt of this payment, which was signed by the Claimant, states the following in pertinent part:

“This will acknowledge receipt of sight draft No. 2963631 in the gross amount of thirty thousand & no/100 dollars (\$30,000) covering separation allowance.

“In consideration of the benefit provided to me by this separation allowance, I hereby resign and relinquish all rights to return to service in any capacity with the Union Pacific Railroad Company, Missouri Pacific Railroad Company, Western Pacific Railroad Company, their parents, affiliates or subsidiaries (“The Company”) effective January 25, 1989. I relinquish all seniority rights derived under any collective bargaining agreement between the Company and any labor union, as well as any rights and benefits under any merger or other protective Agreement or arrangement. I release and forever discharge the Company from any and all claims, causes of actions and liabilities of any kind or nature arising out of my employment at, or termination of my employment from the Company. I further agree not to institute any proceedings against the company, its officers, agents or employees based on any matter relating to my employment at, or termination of my employment from, the Company.

.....

“I acknowledge that this resignation, release and covenant not to sue has been fully explained to me and I understand its terms.”

After signing this release in 1989, R. V. Lochhead, Claimant to the instant case, was subsequently rehired as a new employee by the Carrier on July 8, 1996 as a member of the F&O craft. On January 2, 1997 a claim was filed on behalf of Mr. Lochhead by the General Chairman of the F&O, Spokane, Washington. According to the claim, Mr. Lochhead should have been given full credit for his prior service with the Carrier under Article VIII, Section 1(c) of the October 9, 1996 National Railroad (Settlement) Agreement which became effective on October 19, 1996. The language at bar reads as follows:

Article VIII, Section 1(c)

“ . . . an employee covered by such Article shall receive credit toward completion of the entry rate period for any month in which compensated service was performed for the carrier in any craft”

The claim was denied on grounds that the Claimant had resigned under terms of the separation Agreement cited in the foregoing and was rehired as a new employee. Thus, according to the Carrier, the Claimant did not qualify for “. . . previous credit toward completion of the entry rate period” Absent settlement of this dispute on property it was docketed before the Second Division for final adjudication.

According to argument by the Organization there are no restrictions contained in Article VIII, such as resigning from service under any particular circumstances, which would “. . . deny the Claimant from receiving his previous service credit towards the completion of his entry rate period” Therefore, according to the Organization, the Claimant should have received the 100% pay rate from the date of January 17, 1997 and thereafter.

A review of the record shows that there was a seven year break in service between the time when the Claimant took his 1989 separation allowance as a Clerk and then rehired off the Southern Pacific (now the Union Pacific) as a Fireman and Oiler. After he was hired by the Southern Pacific on July 8, 1996 the new October 9, 1996 Agreement went into effect. According to the Organization the language of Article VIII, Section 1(C) of that Agreement superseded the earlier 1989 separation allowance contract which the Claimant had signed. According to the Organization the new 1996 Agreement provided the Claimant with benefits which he had explicitly forfeited in that earlier separation agreement.

The Board disagrees with the Organization. The language of the 1989 separation agreement is clear and unambiguous. In that agreement the Claimant relinquished his seniority rights “. . . as well as any rights and benefits under any merger or other . . . arrangement” This language cannot but cover the merger of the Union Pacific and the Southern Pacific after 1989 albeit via the earlier merger of the Denver & Rio Grande Western with the Southern Pacific. Obviously, the Claimant did not give away his rights and benefits in the 1989 separation agreement. He sold them. Having sold them he cannot now request back what he sold all the while keeping the sum from the

sale. But the separation agreement also places other obligations on the Claimant. This agreement which he signed also states that the Claimant would not contemplate actions against the Carrier of the type which the instant claim is precisely representative. According to the separation Agreement the Claimant also agreed to “. . . release and forever discharge the Company from any and all claims . . . and liabilities of any kind . . . arising out of (his) employment at, or termination of (his) employment at, the Company”

The Carrier references earlier Award 56 of Public Law Board 3986 off the Southern Pacific - Western Lines where the fact pattern is somewhat comparable to that of the instant case. While there is no need here to cite such precedent since the determinations of the Board on merits here are sufficient unto themselves that earlier Award does state, applicable to the instant case, that “. . . the legal status of (the Claimant's employment) relationship was forfeited, and . . . ceased to exist, when (he) sold it for a sum of money under title of a separation allowance (and) under such a contract former seniority rights are irrevocable precisely because they (were) exchanged for something of value” We can find nothing in the language of the new October 9, 1996 Agreement which would warrant the conclusion that the reasoning used in that earlier Award might not be applicable to the instant case.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division**

Dated at Chicago, Illinois, this 25th day of August 1999.