

The Second Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

(Brotherhood Railway Carmen of the United States
(and Canada

Parties to Dispute: (

(South Buffalo Railway Company

Dispute: Claim of Employees:

1. That Carman P. J. Phillips was unjustly dealt with by the South Buffalo Railway Company when they misinformed him as to his entitlement under the Supplemental Settlement Agreement dated June 29, 1983 in conjunction with his election to accept early retirement.

2. That accordingly, the South Buffalo Railway Company be ordered to carry out its commitment contained in the written estimate of benefits furnished to Mr. Phillips by Mr. K. S. Elek, Supervisor of Personnel, by compensating Carman Phillips in the amount of Four Hundred Dollars (\$400.00) per month for each month that such payment was discontinued.

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.

In August 1983, Claimant received a written estimate of pension entitlements from Carrier's Supervisor of Personnel. The estimate indicated that Claimant would receive a monthly benefit of \$579.11, plus a \$400.00 "window benefit" for twenty-one months commencing December 1, 1983, or until October 1, 1985, when Claimant would reach age 62 and qualify for Railroad Retirement and Social Security benefits. Claimant took early retirement as of August 31, 1983. In January 1985, Claimant notified the Organization that payment of the "window benefit" had ceased in November, 1984. The Organization thereafter filed a Claim on Claimant's behalf, challenging the termination of the payments.

The Organization contends that the Claimant accepted in good faith the written estimate of his pension entitlements from the Carrier's Supervisor of Personnel, the agent historically responsible for informing Carrier's employees of the employment benefits to which they are entitled. Claimant acted on the information from the Supervisor of Personnel about his pension entitlements; the Organization argues that if Claimant had been told that the \$400.00 monthly payments would last only twelve months, he would not have chosen to retire.

The Organization asserts that the Carrier negligently misinformed Claimant as to the real consequences of electing early retirement. Moreover, Claimant was justified in expecting that the Carrier gave him accurate information about his pension entitlements. Claimant undoubtedly was harmed by acting on the information that Carrier supplied, suffering a financial loss of \$3,600.00.

The Organization also argues that contrary to the Carrier's assertion, it filed a grievance in this matter by letter dated February 25, 1985, addressed to Carrier's Vice President, Personnel and Labor Relations. The Organization asserts that the Carrier acknowledged the existence of the grievance when it denied the Organization's request for continued payment of the "window benefit". The Organization contends that the Claim should be sustained, and the Claimant compensated in the amount of \$400.00 for each month that the monthly payments were discontinued.

The Carrier contends that the Organization failed to file a grievance pursuant to Rule 30 of the Agreement; this Claim therefore is not properly before this Board and should be dismissed. Rule 30 provides, in part:

"(b) All claims or grievances will be presented in writing, by the Employee involved or by his Duly Accredited Representative, to his department head within 60 days from the date of the occurrence on which the claim or grievance is based. . . .

* * * *

(d) All claims or grievances involved in a decision by the highest officer (the Superintendent or his designee as provided above) shall be barred unless within 9 months from the date of his decision proceedings are instituted by the Employee or his duly authorized representative before the appropriate division of the National Railroad Adjustment Board or other tribunal having jurisdiction."

The Carrier argues that because no Claim or grievance was submitted to Claimant's department head pursuant to Rule 30(b), this Claim is not properly before this Board. Moreover, there was no decision in this matter by the Superintendent; the Carrier asserts that there is no Claim or grievance referable to this Board.

The Carrier further argues that the Organization also failed to follow the Review Procedure for handling pension disputes as set forth in Carrier's pension booklet. The Review Procedure provides, in part:

"After an application for pension in connection with a participant's retirement is submitted, the right of such participant to a benefit and the amount thereof will be determined in accordance with the provisions of the Plan by the Plan Administrator. If a participant who is not covered by a pension agreement which provides a grievance procedure disagrees with any such determination, he or his duly authorized representative may request a review of the matter by the General Pension Board by submitting a written statement to the Secretary of the General Pension Board, Bethlehem Steel Corporation and Subsidiary Companies, Bethlehem, Pennsylvania 18016. Such statement should clearly state that a review is being requested, set forth the issues in dispute and indicate the participant's views with respect to the matter. The participant or, in appropriate cases, his duly authorized representative will be notified of the General Pension Board's decision after the review is completed.

If a participant is covered by a pension agreement which provides a grievance procedure, then such difference shall be resolved in accordance with such grievance procedure."

The Carrier argues that the Organization's failure to follow the Review Procedure bars this Claim from any further consideration. The Carrier asserts that the Organization's Claim is based on the fact that the Carrier's Supervisor of Personnel made an error in preparing an estimate of Claimant's pension entitlements; such an error cannot alter the parties' previously agreed-upon pension Rules, especially because there is no showing of past practice or acquiescence. The Carrier contends that a mere error cannot rewrite an agreed-upon Rule, particularly where there is no showing of any consistent practice. The Carrier therefore asserts that this Claim should be denied. The Carrier finally contends that the parties' agreed pension Rules cannot be altered even in one case on the basis of equity; the Carrier therefore asserts that this Claim should be denied.


With respect to the merits, this Board finds that it is truly unfortunate that the Claimant was a victim of this error; but under the rules of the retirement plan, he is entitled to no more than the monthly benefit calculated in accordance therewith. This Board has no evidence that the revised figure without the "window benefit" is incorrect; hence, we are without the power to amend his monthly benefit. With respect to the arguments that the Claimant suffered a financial loss as a result of the erroneous estimate on the part of a Carrier representative, this Board is without power to award him any additional payments. The Claimant was given an estimate at his request; unfortunately, it was wrong. This Board has no ability to order the Carrier to make up the difference between the wrongful estimate and the actual payment. This Board is not in the position to afford equitable relief. Hence, the Claim must be denied.

In view of our holding on the merits, we find it unnecessary to address the procedural issues raised by the Carrier.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: 
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 3rd day of December 1986.