Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 12331
SECOND DIVISION Docket No. 12149-I
92-2-90-2-284

The Second Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (Walter M. Fuqua
(
(CSX Transportation, Inc. (former Chesapeake and
(Ohio Railway Company)

STATEMENT OF CLAIM:

This is to serve notice, as required by the Rules of the National Railroad Adjustment Board, of my client, Walter Fuqua's, intention to file an Ex-Parte Submission within 30 days covering an unadjusted dispute between Mr. Fuqua and CSX Transportation, involving the following question: Whether or not CSX Transportation miscalculated Mr. Fuqua's test period average earnings under an award for closing of the South Louisville, Kentucky shop of the L & N Railroad, a Division of CSX Transportation. In particular, Mr. Fuqua received compensation for closing of the Peru yard, which should have been included in the above test period average calculation.

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 were given due notice of hearing thereon.

Claimant was furloughed from the Carrier's locomotive repair facility at Peru, Indiana, on June 17, 1983. At the time of his furlough, Claimant's Organization filed a Claim contending, inter alia, that his furlough resulted from a transaction which triggered employee protection provisions of various agreements and ICC conditions. While these contentions were being pursued, Claimant, on February 1, 1984, was employed as a "new hire" at the Louisville & Nashville Railroad Company's South Louisville Shops, Louisville, Kentucky. Subsequent to February 1, 1984, Claimant maintained seniority in a furloughed status at Peru and began accumulating seniority in a working status at Louisville.

On December 3, 1986, Special Board of Adjustment No. 570, in Award 692, issued a decision holding that Claimant was entitled to protective benefits from the transaction resulting from his furlough at Peru. In settlement of that Award, Claimant, on April 10, 1987, resigned his C&O

seniority and was paid a separation allowance (and compensation for the abbreviated furlough notice) totaling $40,378.80. He continued to work at the L&N South Louisville facility.

On June 26, 1987, Carrier and the International Brotherhood of Electrical Workers entered into an implementing Agreement transferring certain work from Louisville, Kentucky, to Huntington, West Virginia. Claimant, under the terms of the implementing Agreement, and based on his Louisville seniority, transferred to Huntington. In January 1988, he was notified that his test period averages for future protective payments were determined to be 165.79 hours and $2,288.70. The $40,378.80 payment in settlement of SBA 570 Award 692, had not been included by Carrier in its test period computations. Claimant, through his attorney, is before the Board seeking to have the settlement amount, which was received during the test period, included as test period compensation.

Carrier defends on a variety of jurisdictional, procedural and substantive grounds. It argues that the Claim before the Board was not handled as required by the Agreement. It also argues that the Board lacks jurisdiction over matters concerning employee protective payments required by New York Dock Conditions. It stresses that the settlement payment required that Claimant resign his C&O seniority, and that his resignation forecloses any considerations arising from that service being involved in subsequent employee protective computations.

Carrier's arguments on jurisdicational and procedural deficiencies in this matter are well placed. The record is clear. Matters concerning computation of displacement allowances should be presented to an Arbitration Board created by Article 1, Section 11 of the New York Dock Conditions. The record is also clear that this matter was not handled as provided under the parties' Agreement or Section 153, First (i) of the Railway Labor Act. In addition, though, the Claim before this Board is completely without merit.

For one thing, payments required under Awards of this and other Railway Labor Act Boards and arbitrations are required to be allocated to the period of initial entitlement, not to the date of payment to the beneficiary. Railroad Retirement taxes are recovered on this basis as would the return of unemployment benefits, etc, if any were accepted. Claimant's entitlement to additional compensation because he received only a five day notice of furlough, instead of a sixty day transfer of work notice when furloughed at Peru on June 17, 1983, must properly be credited to that period of time, not to May 1987. Likewise, his separation allowance must constructively be credited to the date entitlement was attained at Peru, not the date the Claim to this entitlement was finally satisfied, May 15, 1987, the date of his settlement check. Thus, if the SBA 570 Award 692 settlement were to be considered as a component of test period earnings, payments received would, nonetheless, be outside the time frame of the test period involved here.

Secondly, to be entitled to the separation allowance aspect of the SBA 570 Award 692 settlement, Claimant was obligated to sever his previous

employment. Separation allowances, paid in such circumstances, are not considered an element of compensation for future displacement allowances regardless of when they may be received because, first, they are based on a resignation and, second, to consider them as such would actually duplicate their value each year of the ensuing protective period.

The result of this second point is illustrated by the data applicable in Claimant's case. In the 12 month test period between September 1, 1986, and August 31, 1987, Claimant worked each month and received total earnings of $26,344.04 which produced a monthly guarantee of $2,195.34. If the settlement received from SBA 570 Award 692 were to be included, the total test period compensation would be $66,722.84 and the monthly guarantee would rise to $5,560.24. Assuming that Claimant worked a regular schedule following the move from Louisville to Huntington, Carrier would be obligated to make up the difference between his earnings and the enhanced test period average. This could be as much as $3,000.00 to $3,500.00 per month, with the cause of the difference completely unrelated to anything connected with the transaction which necessitated Claimant's relocation. In a year's time the amount of the original separation allowance would be duplicated. Through the course of a full six year protective period, the inclusion of a forty thousand dollar settlement as an element of compensation for development of test period earnings would increase the total value of the SBA 570 Award 692 settlement to two hundred and forty thousand dollars. This result would be absurd and without foundation in Agreement or law.

The Claim is without merit.

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 27th day of May 1992.