

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

NORFOLK AND WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6256), that:

1. The Carrier violated the Clerks' Agreement, as amended and supplemented, Memorandum Agreement of April 14, 1961, Washington Job Protection Agreement of May, 1936 and Mediation Agreement dated November 20, 1964, when it failed to allow clerical employes A. N. Cook, E. D. Newman, J. A. Spangler, J. E. Baker and A. C. Dixon \$259.20 each in separation pay.

2. The Carrier shall now allow each of the above named Claimants separation allowance in the amount of \$259.20.

EMPLOYEES' STATEMENT OF FACTS: Under date of April 14, 1961, the Employes and the Carrier executed a Memorandum Agreement bearing the effective date of April 16, 1961 (copy previously furnished your Board), the purposes of such Agreement being:

- "1. To permit the Carrier to transfer positions and/or work from all other seniority districts into the office of Comptroller Department Seniority District No. 19.
2. To protect and to provide certain benefits for the employes involved both from and to where the positions and/or work are being transferred.
3. To adjust the rates of pay of positions resulting from the transfer and also of the rebuilt or existing positions from where the positions and/or work was transferred, where such adjustments are warranted and
4. To provide any other benefits as provided herein." (Preamble, Page 1.)

The Employees then filed claim as follows:

"That the Current Clerks' Agreement, as amended, was violated when on December 15, 1964 the Carrier failed to allow Audrey N. Cook, Effel D. Newman, James A. Spangler, James E. Baker and Alfred C. Dixon \$259.20 in separation pay. This amount became due the above named Claimants due to the retroactive wage increase of 9 cents per hour which became effective as of January 1, 1964.

We cite the rules of the current Clerks' Agreement as amended, the National Agreement of November 20, 1964, the Washington Job Protection Agreement, and the Memorandum Agreement of April 14, 1961, in support of these claims."

The Carrier declined the claim.

(Exhibits not reproduced.)

OPINION OF BOARD: Under date of April 14, 1961, Clerks and Carrier executed a Memorandum of Agreement bearing the effective date of April 16, 1961, the purpose of said Agreement being:

- "1. To permit the Carrier to transfer positions and/or work from all other seniority districts into the office of Comptroller Department Seniority District No. 19.
2. To protect and to provide certain benefits for the employees involved both from and to where the positions and/or work are being transferred.
3. To adjust the rates of pay of positions resulting from the transfer and also of the rebuilt or existing positions from where the positions and/or work was transferred, where such adjustments are warranted and
4. To provide any other benefits as provided herein." (Preamble.)

Inter alia, the Agreement provides:

"Section 2. Employees whose positions are covered by notice in Section 1 (a) and (b) hereof will have one of the following options when the work on their respective positions has diminished, either through the transfer of work in whole or in part to Comptroller Department Seniority District No. 19, to the extent that such positions are deemed unnecessary:

1. Follow their positions and/or work into Seniority District No. 19 or;
2. Exercise seniority displacement rights in accordance with current Rules Agreement or;
3. Resign from Carrier's service and accept separation allowance in accordance with the provisions of Section 9 of the Agreement of May, 1936, Washington, D.C."

Claimants herein held positions covered by Section 2.

Section 9 of the Agreement of May, 1936, Washington, D.C., herein called the Washington Agreement, which the parties adopted for the purpose of computing separation allowances, reads:

"Section 9. Any employe eligible to receive a coordination allowance under Section 7 hereof may, at his option at the time of coordination, resign and (in lieu of all other benefits and protections provided in this agreement) accept in a lump sum a separation allowance determined in accordance with the following schedule:

Length of Service	Separation Allowance
1 year and less than 2 years	3 months' pay
2 years and less than 3 years	6 months' pay
3 years and less than 5 years	9 months' pay
5 years and less than 10 years	12 months' pay
10 years and less than 15 years	12 months' pay
15 years and over	12 months' pay

In the case of employes with less than one year's service, five days' pay, at the rate of the position last occupied, for each month in which they performed service will be paid as the lump sum.

(a) Length of service shall be computed as provided in Section 7.

(b) One month's pay shall be computed by multiplying by 30 the daily rate of pay received by the employe in the position last occupied prior to time of coordination."

Section 7 of the Washington Agreement, in material part, reads:

"Section 7 (a) Any employe of any of the carriers participating in a particular coordination who is deprived of employment as a result of said coordination shall be accorded an allowance (hereinafter termed a coordination allowance), based on length of service, which (except in the case of an employe with less than one year of service) shall be a monthly allowance equivalent in each instance to sixty per cent (60%) of the average monthly compensation of the employe in question during the last twelve months of his employment in which he earned compensation prior to the date he is first deprived of employment as a result of the coordination. This coordination allowance will be made to each eligible employe while unemployed by his home road or in the coordinated operation during a period beginning at the date he is first deprived of employment as a result of the coordination and extending in each instance for a length of time determined and limited by the following schedule:

Length of Service	Period of Payment
1 year and less than 2 years	6 months
2 years and less than 3 years	12 months
3 years and less than 5 years	18 months
5 years and less than 10 years	36 months
10 years and less than 15 years	48 months
15 years and over	60 months"

On and prior to April 15, 1964, Claimants were incumbents of clerical positions that existed in Carrier's Comptroller Department, Seniority District No. 19. The work of the positions was transferred or changed from manual performance to data processing machines and need for the clerical positions occupied by Claimants ceased to exist. Consequently, Claimants were notified that their positions would be abolished at 5:00 P.M. on April 15, 1964, and each of them had the option of exercising their displacement rights as provided in Item 2 of Section 2 of the April 14, 1961, Memorandum of Agreement; or, of resigning and accepting separation allowance as provided for in Item 3 of said Section 2. Each Claimant chose the option provided for in Item 3. On April 15, 1964, each Claimant was paid a separation allowance computed on the basis of his daily rate of pay on the effective date of his resignation (April 15, 1964). There is no dispute that the allowances were correctly computed as of that time.

Seven months after each of Claimants had resigned from Carrier's service, on November 20, 1964, a National Agreement to which Clerks is party was consummated which provided:

"ARTICLE I. WAGE INCREASES

Section 1. Effective January 1, 1964, all hourly, daily, weekly, monthly and piece-work rates of pay for employees covered by this agreement, other than employees represented by the Brotherhood of Railroad Signalmen, will be increased in the amount of 9 cents per hour applied so as to give effect to this increase in pay irrespective of the method of payment. * * *. (Emphasis ours.)

* * * * *

(2) COVERAGE.

All employees who were on the payroll of the carrier on January 1, 1964, or who were hired subsequent thereto, regardless of whether they are now in the employ of the carrier, shall receive the amounts to which they are entitled under this Agreement. * * *"

Carrier distributed checks under date of December 15, 1964, effecting lump sum payments of the nine cents per hour increase for the period January 1 through November, 1964. Claimants were, at that time, paid the hourly rate increase for the period from January 1, 1964 to the date of their resignations, April 15, 1964. Whereupon, Clerks filed Claim that in addition to the amount of the separation allowances paid to Claimants at the time of their resignations, an additional amount should be paid reflecting the retro-active wage increase by application of the formula prescribed in Section 9 of the Washington Agreement as follows:

$\$.09 \times 8 \text{ hours} = \$.72$ (increase in daily rates)
 $\$.72 \times 30 \text{ hours} = \$ 21.60$ (one month's pay)
 $\$ 21.60 \times 12 \text{ months} = \$ 259.20$ (additional amount due)

The issue confronting us is whether Claimants, having resigned on April 15, 1964, and having received at that time a separation allowance in accordance with the existing Agreements predicated upon their then compensation, have any contractual right to the increase in the amount of the separation allowance prayed for by Clerks. We find they have no such right.

The exercise of Claimants' option to resign and Carrier's obligation to pay the separation allowance constituted a bilateral contract. Reading Sections 9 and 7 of the Washington Agreement together, it is plain that the factors listed in those Sections are to be applied as they exist as of the date of the resignation. When so applied, and the resulting computed amount of the separation allowance is paid, the contract is fulfilled by accord and satisfaction and the employee-employer relationship is absolutely terminated. This being so, it follows that Claimants' rights under the Washington Agreement were fully satisfied as of the date of their resignations. Were we to adopt Clerks' arguments, we would be adding to the provisions of the Washington Agreement—an action beyond our jurisdiction.

Referring to Section I (j) of the National Agreement dated November 20, 1964, we find that Claimants were in no better position than any other employe whose employment, for any reason, was terminated after January 1, 1964.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of August 1968.