

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award **Number** 25471  
Docket Number CL-25169

Robert W. McAllister, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,  
( Freight Handlers, Express and Station **Employes**

PARTIES TO DISPUTE: (

(The Chesapeake and Ohio Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (**GL-9756**) that:

(**a**) The Carrier violated the January 30, 1979 National Agreement, in particular, Articles I, II and III, thereof, when it failed and/or refused to allow Claimant Hunter payment of the lump sum and retroactive pay provided for under the provisions of said Articles, and

(**b**) Carrier shall now allow Claimant Hunter the \$100.00 lump sum payment plus all retroactive general wage increases and cost-of-living allowance pursuant to the terms of the National Agreement, and properly adjust his separation allowance to reflect such retroactive pay increases.

OPINION OF BOARD: On January 8, 1979, the Carrier served notice to Clerical employees holding seniority that Position T-22, Agent-Operator, located at Buchanan would be abolished. In accordance with a Memorandum of Agreement effective January 29, 1979, the Claimant, W. T. Hunter, had the option of remaining in the Carrier's employment and exercising his seniority rights to other positions available **or** terminating his services and accepting a separation allowance. Effective January 30, 1979, a National Agreement was entered into which provided that employees would receive a \$100 lump sum plus retroactive wage and cost of living allowances from January 1, 1978. This claim is for those items, and the readjustment of Claimant's separation allowance reflecting the retroactive wage adjustments.

It is undisputed the Article of the 1979 National Agreement covering lump sum payment, General Wage Increases, and Cost of Living Adjustments II, II, and **III**) apply only to employees who have a current employment relationship or who have retired. (**In** the cases of the wage and cost of living increases, the retirement had to be subsequent to April 1 and October 1, 1978, respectively.) The Carrier takes the position that, as of January 26, 1979, the Claimant accepted a separation allowance and terminated his relationship with Carrier, and this act is viewed as a bilateral contract which, thereby, constituted relinquishment of all seniority rights.

Notwithstanding the Carrier's position and citing of Third Division Award 16555 we believe the issue at hand rests upon what meaning the parties intended to apply to the use of the term "retirement" in Articles I, II, and III of the 1979 National Agreement. It is factual to say the Claimant did elect to sever his employment relationship to receive a separation allowance. The question then is, does that action exclude any evidence on the part of an **employee** of an intent to retire? This Board is unable to embrace such a broad and mutually exclusive interpretation of the applicable language and holds

that answer to whether or not the Claimant also retired depends upon the record before us. The Claimant, by letter of April 2, 1979, stated he retired from the Carrier effective January 26, 1979. The Division Manager replied that the Carrier's records show **"You** elected to take a separation allowance and terminated your service with this Company effective January 29, **1979."** Thereafter, all correspondence up until November 9, 1979, consistently referred to January 29 as the effective date of separation. Beginning that date, and in its Submission, the Carrier continued to use the January 26 date as a basis for arguing the Claimant quit the Carrier's service prior to January 27, 1979, the date Carrier characterizes as **"so-called proof"** of Claimant's retirement.'

On April 16, 1979, the Claimant was issued a Railroad Retirement Award Notice informing him he was entitled to a supplementary annuity effective January 27, 1979. The Notice also indicated this award superceded an award previously made. That Notice additionally indicated the Claimant was entitled to a regular annuity effective January 27, 1979,

Raving reviewed these circumstances, this Board views the evidence as initially establishing a prima facie case that the Claimant accepted a separation allowance and, concurrently, retired. If the stated effective date of separation was **wrong** or Carrier possessed information the Claimant did not apply for a retirement annuity effective January 27, 1979, it has failed to produce probative evidence other than assertions and argument to **rebut the** Organization's evidence and its own stipulated record of the date of separation. Accordingly, we will sustain the Claimant's grievance in the absence of evidence to the contrary.

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 **Employees** involved in this dispute are respectively Carrier and **Employees** 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 the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:   
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of May 1985.