

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 31421
Docket No. MS-30663
96-3-92-3-449

The Third Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

PARTIES TO DISPUTE: (T. L. Gardner
(
(CSX Transportation, Inc. (former
(Seaboard Coast Line Railroad Company)

STATEMENT OF CLAIM:

"This is to serve notice, as required by the rules of Natl. RR. Adj. Board, of our intention to file an Ex Parte Submission within thirty (30) days covering an unadjusted dispute between us, Transportation Comms. Union and CSX Transportation reducing agreed to Separation Agreement for employees covered under date of October 20, 1988, for \$50,000.00.

We wish to claim full remuneration since many uncovered employees on CSXT's Tampa Division were paid the full \$50,000.00 payoff from October, 1988, to the so-called Implementing Agreement which we feel the Labor Organization should not have accepted until such time as the original signees had been made an offer for separation; i.e. I. Southers, C. Caraway, G. Copeland, J. H. Daniels, S. J. Brock, P. J. Thomas, and T. L. Gardner."

FINDINGS:

The Third 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 waived right of appearance at hearing thereon.

In October 1988 a voluntary separation program was made available to clerical employees covered by the SCL Clerical Agreement under the terms of an August 21, 1986 Letter Agreement. The program was designed to accelerate attrition by allowing a \$50,000.00 lump sum payment to clerical employees who would terminate their employment at locations where an excess number of clerical employees existed. Those employees interested in the "Voluntary Separation Program" (VSP) were required to submit an application.

At the close of the application period, some VSP separations were allowed on a location by location basis, depending on Carrier's needs and the number of excess employees. Claimant was one of the employees whose application for the aforementioned separation was not accommodated and that particular separation program closed out on December 31, 1990. No claim or protest of VSP violation was filed by Claimant at that time.

On January 29, 1991, the Carrier and the Organization entered into another Agreement governing coordination of clerical work and related functions performed at various locations throughout CSX, in connection with Carrier's establishment of a centralized Customer Service Center (CSC) at Jacksonville, Florida. As part of that Agreement, the Carrier offered a separation allowance to employees "excessed" by the transfer of work. The separation package covering the establishment of the CSC was outlined in Side Letter No. 7, which states:

"The amount of separation offered by the Carrier will be \$42,500.00 less applicable deductions required by law."

Also under date of January 29, 1991, Labor Relations Director J.P. Arledge and then TCU General Chairman C.H. Brockett confirmed an understanding that employees electing to accept the CSC separation package could do so without waiving their right to file a claim for the \$7,500 difference between the CSC separation allowance and the package offered in the Voluntary Separation Program.

Claimant held the position of Data Processing Clerk at the Tampa Terminal Service Center. He applied for and received the CSC Side Letter No. 7 separation allowance and was separated from service effective June 15, 1991. In August 1991, the District Chairman submitted the following claim:

"Carrier violated the terms and conditions of the Voluntary Separation Agreement when it failed or refused to allow T. Gardner proper compensation.

As a result of the aforementioned violation, Carrier shall now compensate T. Gardner the difference between \$50,000 and the amount of separation allowance previously allowed."

Carrier denied the claim maintaining that Claimant's separation had nothing to do with the August 1986 Letter Agreement and that he had accepted voluntary separation from service, based upon the amount provided for by CSXT Agreement No. 6-008-91, Side Letter No. 7.

Although the Organization did not progress the claim further, Claimant elected to submit this dispute to the Board for resolution. It is noted that the claim progressed to this Board by Claimant with his Notice of Intent is significantly altered from that which was handled on the property. Specifically, the statement of claim before the Board includes the names of some six other individuals for whom Claimant now seeks "et. al" treatment. None of these alleged claims was mentioned, let alone handled, in appeals on the property and they must be dismissed due to that fatal procedural/jurisdictional defect.

With respect to Claimant's personal claim, we can find no violation of any contractual right. Carrier's VSP under the August 1986 Letter Agreement was instituted in October 1988, and expired on December 31, 1990. At the time the program expired, Claimant knew his application request could not be accommodated, and did not protest his exclusion from the program at that time. Some six months later, he applied for and received a different separation allowance under the terms of the CSC Side Letter No. 7 Agreement, the specific terms of which applied only to those employees affected by that particular "coordination." Claimant was one of those affected employees and he chose to take advantage of that particular separation package. So far as this record shows, Claimant received exactly what he and the Organization bargained for and he has no justifiable claim to the VSP separation allowance. Based on all of the foregoing, his claim must be denied.

AWARD

Claim dismissed/denied.

Form 1
Page 4

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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 Third Division

Dated at Chicago, Illinois, this 21st day of March 1996.