

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 33172
Docket No. CL-31831
99-3-94-3-132

The Third Division consisted of the regular members and in addition Referee Martin F. Scheinman when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(Illinois Central Railroad)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-11018) that:

1. Carrier violated the effective agreement when it failed to compensate Ms. Helen Tromp the lump sum payment (\$1,025.00) provided for in Article II, Part A, Section 2 of the National Agreement of June 1, 1991;
2. Carrier shall now compensate Claimant Tromp the amount which is due her in accordance with said Agreement.”

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 were given due notice of hearing thereon.

This claim involves a dispute between the parties over lump sum payments under the June 1, 1991 National Agreement. There are two provisions within that wage settlement Agreement regarding lump sum payments that are applicable to this case. The first is Article II - Cost-of-Living Payments wherein Section 2 states:

“Subject to Sections 6 and 7, employees with 1,000 or more straight time hours paid for (not including any such hours reported to the ICC as constructive allowances except vacations, holidays, paid sick leave and guarantees in protective agreements or arrangements) during the period April 1, 1992, through September 30, 1992, will receive a lump sum payment on January 1, 1993, equal to the difference between (i) \$1,025.00, and (ii) the lesser of \$513.00 and one quarter of the amount, if any, by which the carriers’ 1993 payment rate for foreign-to-occupation health benefits under the Plan exceeds the sum of (a) the amount of such payment rate for 1992 and (b) one-half the amount per covered employee that will be taken during 1993 from the Special Account to pay or provide for Plan foreign-to-occupation health benefits.”

Equally pertinent to the resolution of this claim is Section 8 of the same aforementioned Article titled Eligibility for Receipt of Lump Sum Payments which states:

“The lump sum cost-of-living payments provided for in this Article will be payable to each employee subject to this Agreement who has an employment relationship as of the dates such payments are made or has retired or died subsequent to the beginning of the applicable base period ‘used to determine the amount of such payments. There shall be no duplication of lump sum payments by virtue of employment under an agreement with another organization.’” (Emphasis added)

The parties agree that the Claimant was in the Carrier’s service until September 23, 1992 when she retired and accepted a separation allowance. The Railroad Retirement Board granted her a regular annuity beginning September 24, 1992. The question to be resolved is whether the Claimant is entitled to the second lump sum cost of living payment of \$1,025.00 that was made on January 1, 1993.

The Carrier argues that the National Agreement required that the Claimant have an employment relationship on September 30, 1992 in order to qualify for the second

lump sum payment. Because she was not actively working on that date, the Carrier insists it has no obligation to make the payment. Additionally, the Carrier argues that the claim was not timely filed and that the Claimant had signed a Release of any and all claims filed pursuant to the Collective Bargaining Agreement.

It is the Organization's position that the Claimant is entitled to the second lump sum payment and the Carrier's technical arguments are baseless.

The Board will review each argument beginning with whether the Claimant needed to have an active employment relationship in order to qualify for the lump sum payments. Section 8 states: ". . . an employment relationship as of the dates such payments are made or has retired . . . subsequent to the beginning of the applicable base period used to determine the amount of such payments." (Emphasis added) The language is explicit; the Claimant did not have to be actively working to qualify for the lump sum payment.

We next address the Carrier's time limit argument. The record indicates that the parties did not handle this claim and others involving lump sum payments in the same or usual manner as most claims. The April 30, 1993 claim was handled directly between the General Chairman and the Manager of Labor Relations. The Carrier's initial response of May 5, 1993 took no exception to the General Chairman's request for a lump sum payment to the Claimant. That response coupled with the fact that the parties to the National Agreement did not include any time limit provision for enforcement compels the Board to determine that time limits were not applicable to the handling of lump sum payments.

The last issue involves whether the Resignation of Employment and Release form signed by the Claimant on September 25, 1992 absolves the Carrier of any responsibility to make the lump sum payment. Examination of the form indicates it is a release for any pending claims, as it directs the Organization to "dismiss and withdraw" such. At the time the Claimant signed the Release she had no way of foreseeing that the Carrier would not subsequently pay her monies due under the National Agreement. Claimant's signature on the form in this instance does not relieve the Carrier of its obligation to pay the lump sum payment.

The claim is sustained and the Carrier is directed to pay the Claimant \$1,025.00.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 25th day of March 1999.