

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41186
Docket No. MS-38476
11-3-NRAB-00003-040445**

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

PARTIES TO DISPUTE: (Phoebe M. Hudspeth
(
(Union Pacific Railroad Company

STATEMENT OF CLAIM:

“(1) The ineffective, invalid, and defective ‘Resignation, General Release and Covenant Not To Sue’ agreement.

(2) The misrepresentation of the ‘Resignation, General Release and Covenant Not To Sue’ agreement.

(3) The document rescinded, totally made whole, and seniority reinstated.”

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.

The Petitioner’s September 1, 2004 Notice of Intent set forth the official Statement of Claim before the Board as noted hereinabove. Nevertheless, the Board notes that the Petitioner’s Ex Parte Submission contains the following:

“STATEMENT OF CLAIM

1. Whether the contract is knowing and voluntary, deception, misstatement, misrepresentation, material mistake, fraud, and omission.

Remedy Sought

Ms. Hudspeth seeks seniority reinstated, other benefits unimpaired and totally made whole including, but not limited to lost wages and retirement benefits for damages known and unknown.”

The instant matter has an unusual procedural history. According to the Submissions, the Petitioner was employed by the Carrier in 1978 as a member of the United Transportation Union (UTU). She transferred to the clerical craft and gained a clerical seniority date of February 16, 1984. Differences between her and the Carrier arose thereafter and culminated in her signing two documents. They read as follows:

“RESIGNATION, GENERAL RELEASE AND COVENANT NOT TO SUE

THIS WILL ACKNOWLEDGE RECEIPT OF VOUCHER NO. 4384660 IN THE GROSS AMOUNT OF FORTY-THREE THOUSAND SIX HUNDRED FORTY-TWO AND 80/100 (\$43,642.80) COVERING SEPARATION ALLOWANCE.

IN CONSIDERATION OF THE BENEFIT PROVIDED TO ME BY THIS SEPARATION ALLOWANCE, I HEREBY RESIGN AND RELINQUISH ALL RIGHTS TO RETURN TO SERVICE IN ANY CAPACITY WITH THE UNION PACIFIC RAILROAD COMPANY, MISSOURI PACIFIC RAILROAD COMPANY, WESTERN PACIFIC RAILROAD COMPANY, THEIR PARENTS, AFFILIATES OR SUBSIDIARIES (‘THE COMPANY’), EFFECTIVE NOVEMBER 19, 1990. I RELINQUISH ALL SENIORITY RIGHTS DERIVED UNDER ANY COLLECTIVE BARGAINING AGREEMENT BETWEEN THE COMPANY AND ANY LABOR UNION, AS WELL AS ANY RIGHTS AND BENEFITS UNDER ANY MERGER OR OTHER PROTECTIVE AGREEMENT OR

ARRANGEMENT. I RELEASE AND FOREVER DISCHARGE THE COMPANY FROM ANY AND ALL CLAIMS, CAUSES OF ACTION AND LIABILITIES OF ANY KIND OR NATURE ARISING OUT OF MY EMPLOYMENT AT, OR TERMINATION OF MY EMPLOYMENT FROM, THE COMPANY. I FURTHER AGREE NOT TO INSTITUTE ANY PROCEEDINGS AGAINST THE COMPANY, ITS OFFICERS, AGENTS OR EMPLOYEES BASED ON ANY MATTER RELATED TO MY EMPLOYMENT AT, OR TERMINATION OF MY EMPLOYMENT FROM, THE COMPANY.

I ACKNOWLEDGE THAT WITH MY RESIGNATION, HEALTH CARE COVERAGE FOR ME AND MY FAMILY WILL CEASE, AND THAT I HAVE BEEN INFORMED OF MY RIGHTS AND OBLIGATIONS UNDER THE 'CONTINUATION COVERAGE' PROVISIONS OF PUBLIC LAW 99-272 SHOULD I DESIRE EXTENSION OF HEALTH COVERAGE AT GROUP RATES (SEE ATTACHED DOCUMENTATION FOR EXPLANATION OF PROVISIONS).

I ACKNOWLEDGE THAT THIS RESIGNATION, RELEASE AND COVENANT NOT TO SUE HAS BEEN FULLY EXPLAINED TO ME AND I UNDERSTAND ITS TERMS.

SIGNED AT Omaha, NE, THIS 19 DAY OF November, 1990.

/s/ Phoebe M. Hudspeth"

(Additional identifying information omitted)

* * *

The document contains one witness signature.

SUPPLEMENT

I, Phoebe M. Hudspeth, SSN XXX-XX-XXXX, state clearly nothing contained within the Resignation, General Release and Covenant Not To Sue shall be construed to insinuate that I voluntarily relinquish my

‘Right To Continue’ any and all EEOC claims already begun nor shall it be construed to mean an abandonment of my right to initiate litigation as a result of Findings revealed during investigation of such claims either by me, Government Agency or others. It is understood this exception to the Resignation, General Release and Covenant Not To Sue shall not apply to existing claims and grievances progressed pursuant to the Collective Bargaining Agreement between Union Pacific Railroad and the Transportation Communications Union.

/s/ Phoebe M. Hudspeth 11-19-90”

The Supplement contains four witness signatures.

At the time of the document signing in November 1990, Rule 46 of the applicable Transportation Communications International Union Agreement contained time limits for the filing and processing of claims. The initial time limit for filing a claim was 60 days from the date of the occurrence on which the claim was based. The record before the Board does not establish that any claim was filed within that time limit.

The Petitioner’s Submission contains two affidavits in support of her contentions that the Supplement she signed in November 1990 misstated its purpose. Both affidavits were signed and notarized on August 17, 1995. Nonetheless, the record does not establish that any claim was filed within 60 days of the August 17, 1995 date.

Neither the Petitioner’s Submission nor that of the Carrier shows that any claim was filed at any time on or after November 19, 1990 pursuant to Rule 46 of the applicable TCIU Agreement or any similar successor Rule language. Moreover, the Submissions do not establish that any claim was ever handled on the property in accordance with the usual manner specified by the applicable TCIU Agreement.

Just short of 14 years after the November 19, 1990 signing of the separation documents noted above, the Petitioner filed her September 1, 2004 Notice of Intent to file an Ex Parte Submission. It was received by the Board on September 3, 2004.

Given the procedural history outlined herein, the Carrier contends that the matter must be dismissed by the Board for lack of jurisdiction. The facts compel the Board to agree with the Carrier’s position.

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Section 3, First, (i) of the Railway Labor Act, as amended, requires that claims and grievances must be handled in accordance with the usual manner on the property before they may be properly referred to the Board for disposition on their merits. The record before the Board does not establish that the jurisdictional conditions have been satisfied. Therefore, the Board must dismiss the matter.

AWARD

Claim dismissed.

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 December 2011.