

Award No. 18356  
Docket No. MS-18774

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**John H. Dorsey, Referee**

**PARTIES TO DISPUTE:**

**SAMUEL COOPER**

**THE PULLMAN COMPANY**

**STATEMENT OF CLAIM:** PLEASE TAKE NOTICE that the undersigned intends to submit an ex parte petition on behalf of Samuel Cooper of 308 Florida Street, Buffalo, New York, on or about the 27th day of June, 1970.

**DESCRIPTION OF DISPUTE**

Petitioner was employed as a porter by The Pullman Company from January 3, 1925 through December 31, 1968, the date on which The Pullman Company ceased doing business. On August 1, 1968, petitioner was hospitalized and placed on sick leave by The Pullman Company. Petitioner remained in that status through December 31, 1968. On January 9, 1969, petitioner applied for and was subsequently granted retirement benefits by the Railroad Retirement Board retroactive to August 8, 1968, one week subsequent to the date on which petitioner went on sick leave.

On April 9, 1969, petitioner applied to The Pullman Company for a separation allowance pursuant to an agreement between The Pullman Company and the Brotherhood of Sleeping-Car Porters dated May 27, 1968. Said agreement provides for separation allowances for all "protected" employees who are furloughed. The Pullman Company has denied petitioner's claim for separation allowance, relying on Article I, Section 1(a) of the agreement which provides that furloughed employees shall be entitled to a separation allowance "... unless or until retired," and on Article II, Section 2, of said agreement which provides in part: "An employe shall cease to be a protected employe in case of his ... retirement. ..."

It is clear that the Railroad Retirement Board can, and upon request and a refund of benefits will, change petitioner's annuity beginning date to January 9, 1969, or later.

**QUESTION INVOLVED**

The questions involved are (1) whether retirement commencing subsequent to the date of furlough but made retroactive to such time, and which period of retirement retroactively granted may readily be expunged, operates to deny petitioner's right to a separation allowance under the aforesaid agreement, and (2) whether the agreement of May 27, 1968 requires furloughed employees to request and receive the separation allowance prior to retirement.

**OPINION OF BOARD:** In our Award No. 17796, dated March 27, 1970, we dismissed the petition "without prejudice," conference between the parties, to resolve the dispute, not having been held on the property. Subsequently, on May 4, 1970, the parties did confer. On June 25, 1970, Claimant, by his attorney, again petitioned the Board to consider and resolve the dispute on the merits. This gives rise to an issue whether the Board now has jurisdiction to entertain the June 25, 1970, petition.

An award dismissing a claim "without prejudice" is final and binding on the parties and terminates the exercise of the Board's jurisdiction relative to the particular dispute (see Section 3, First (m) of the Railway Labor Act as amended). Accord, Third Division Awards No. 9435, 9451, 10516, and 11096; First Division Award No. 20551; Second Division Awards No. 4034 and 4044; Fourth Division Awards No. 793, 990 and 993.

For the foregoing reasons we are compelled to dismiss the petition filed on June 25, 1970, for lack of jurisdiction.

**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 is without jurisdiction over the dispute involved herein; and

That the petition filed June 25, 1970, must be dismissed for lack of jurisdiction.

#### AWARD

Petition filed June 25, 1970, dismissed for lack of jurisdiction.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 31st day of December 1970.