

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19603
Docket Number CL-19561

Robert M. O'Brien, Referee

(Brotherhood of Railway and Steamship Clerks,
(Freight Handlers, Express and Station Employees
PARTIES TO DISPUTE: (
(Central Vermont Railway, Inc.

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7055) that:

(1) Carrier violated the terms and provisions of the Agreement of February 25, 1971, when it refused to apply the wage increase of 5% effective January 1, 1970, to Messrs. W. T. Donovan, H. F. Gadhue, C. D. Hatfield, and R. P. Thibault, each of whom resigned from service during the year 1970 for the purpose of retiring from service and securing an annuity under the provisions of the Railroad Retirement Act and,

(2) That Carrier shall now be required to compensate Messrs. Donovan, Gadhue, Hatfield and Thibault the 5% wage increase due them from January 1, 1970, until the date of their resignation for the purpose of retiring from service.

OPINION OF BOARD: The claim herein was filed on behalf of four claimants, all of whom left the Carrier's service in 1970, contending that Carrier violated the February 25, 1971 National Mediation Agreement by not providing claimants with the 5% wage increase provided therein for the period they were employed after January 1, 1970. Section 1(i) of the February 25, 1971 Agreement provides, in pertinent part, "All employees who had an employment relationship after December 31, 1969 shall receive the amounts to which they are now entitled (5%) under this Section 1 regardless of whether they are now in the employ of the carrier except persons who prior to December 11, 1970 have voluntarily left the service of the carrier-other than to retire....."

Claimants contend they are entitled to the 5% wage increase since they left Carrier's service for the purpose of retiring while Carrier maintains that they left its service to accept a separation allowance and not to retire. It is uncontroverted that all the claimants received an annuity under the Railroad Retirement Act effective the date they left Carrier's service or close thereafter except claimant Thibault who received a disability annuity under the Railroad Retirement Act. However, it is also undisputed that they also received a separation allowance upon leaving Carrier's employ.

This Board is thus called upon to determine why, in fact, claimants terminated their employment with Carrier - to retire or to accept a separation allowance? Of course, the best way to make such determination is to question the claimants relative to their intent. Yet since we are unable to do so, we must ascertain their subjective intent from the facts of record herein.

Upon termination of employment with Carrier, claimant Donovan had 46 years service with Carrier but the record is silent as to his age; claimant Gadhue had 47 years service and was 71 years old; claimant Hatfield had nearly 28 years service and he was over 68 years old; while claimant Thibault had 42 years service and was 59 years old. All applied for and received an annuity under the Railroad Retirement Act except Thibault who received a disability annuity. We are of the opinion that relative to claimants Donovan, Gadhue and Hatfield taking into account their age and length of service with Carrier, their primary reason for leaving their employment was for the purpose of retiring. The separation allowance they received would probably not be sufficient to induce them to terminate their employment without their securing an annuity. Thus the separation allowance was at best a secondary reason for their termination. However, the facts surrounding claimant Thibault's departure are dissimilar from the others. He was 59 years old when he left and conceivably had several productive years of employment ahead of him. This coupled with the fact he did not secure a retirement annuity leads us to conclude that his purpose for terminating his service was other than to retire thus he comes within the exclusionary clause of the February 25, 1971 Agreement and is not entitled to the 5% wage increase for his employment in 1970.

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 in accordance with Opinion.

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Claim sustained for claimants Donovan, Gadhue and Hatfield.

Claim denied for claimant Thibault.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: E. G. Killen
Executive Secretary

Dated at Chicago, Illinois, this 14th day of February 1973.