

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25869
Docket Number CL-25815

Charlotte Gold, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employes
(Southern Pacific Transportation Company (Western Lines)

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
(GL-9886) that:

(a) The Southern Pacific Transportation Company violated the current Clerk's Agreement when on June 10, 1982 it refused to allow Mr. A. L. Hobbs, Clerk, Klamath Falls, Oregon, an Article IV, Section 1(b) Separation Allowance when he was affected by the abolishment of a permanent position and could not be continued in employment without moving his residence in excess of 75 miles.

(b) The Southern Pacific Transportation Company shall now be required to grant Mr. A. L. Hobbs a Separation Allowance, computed in accordance with Article IV, Section 3, of the TOPS Agreement.

(c) The Southern Pacific Transportation Company shall also be required to pay Mr. A. L. Hobbs interest at the rate of fifteen (15) percent annually on the monies due him as a Separation Allowance, such interest to accrue from June 13, 1982 and be compounded annually until such time as the funds due are paid."

OPINION OF BOARD: In July 1978, Claimant, a Clerk with ten years of seniority at Carrier's Los Angeles Division, voluntarily transferred to the Oregon Division. In June 1982, he was displaced off his Guaranteed Extra Board position. Since there were no Junior employes working within a 75 mile radius of Klamath Falls whom he could have displaced, he requested a lump sum separation allowance in accordance with Article IV, Section 1(b), of the Clerical Agreement. That Article reads in pertinent part as follows:

"(b) - In the case of abolishment of permanent positions under conditions other than as specified in Article I, Section 2, Items 2, 4 or 5, or Article IV, Section 1(a), a protected employe whose permanent position is abolished or is in directly related chain of displacements, who has ten (10) or more years of employment relationship with one (1), or an aggregate of ten (10) or more years with two (2) or more of the carriers parties hereto, and who would be required to move his residence in excess of 75 miles in order to obtain the nearest available position on his seniority roster, district or region, may elect to resign from carrier's service and accept a lump sum separation allowance on basis set forth in Section 3 of this Article."

The Organization maintains that Claimant meets all the criteria for a lump sum separation allowance: (1) he has at least two years seniority on the Oregon Division, Master Roster No. 3, which qualifies him as a protected employe; (2) he has more than a ten-year employment relationship with Carrier; and (3) there were no jobs available within 75 miles of his last work location.

Carrier argues that by Claimant's voluntary transfer to Oregon, he established a new seniority date on Master Roster No. 3 and that, consequently, his bidding and displacing rights on that roster were reduced to those of a new hire. He would not qualify for protective benefits until 1988. Had he been able to bring his earlier seniority with him, he would still be able to hold an assignment at Klamath Falls. Claimant voluntarily reduced his seniority and thus does not meet the test of Article IV, Section 1(b), which requires that an employe establish at least ten years of usable seniority. Carrier urges that a contrary interpretation would encourage employes to voluntarily transfer to new locations where they anticipated they would be displaced and subsequently would be eligible for protective benefits.

Despite Carrier's concern about Claimant's motives in seeking a transfer to Oregon, we find the language of Article 4, Section 1(b), to be clear and unequivocal. One of the key criteria listed in that Rule for a separation allowance is that an employe must have ten or more years of an employment relationship with a Carrier or Carriers party to the Agreement. The drafters of the Agreement were knowledgeable about the distinctions among such terms as seniority, years of service, length of service, and employment relationships and we cannot now interpret their Agreement so as to equate employment relationship with useable seniority.

Under the criteria outlined in Article IV, Section 1(b), we must conclude that Claimant is eligible for a lump sum separation allowance, which, in turn, is to be computed based on the terms of Article IV, Section 3. Despite Carrier's error in interpreting and applying the Agreement, however, we find no valid basis for allowing the interest claimed. A long line of Awards from this and other Divisions support that general decision. Further, we can discover no special features of this case that would cause us to determine that there are special circumstances here where payment of interest is warranted.

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.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of January 1986.