

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26206
Docket Number MS-26075

Gil Vernon, Referee

(Norman Ray Stevens

PARTIES TO DISPUTE: (

(Illinois Central Gulf Railroad Company

STATEMENT OF CLAIM:

"On April 4, 1983 a six or seven month pay resignation offer was posted on the bulletin boards of the Chicago Accounting Department. This offer was directed to all Protected Employee Clerks, both Merger and April 1, 1981, during a time when there was an excess of Protected Employee Clerks on the Account-Department Roster. This offer is a flagrant violation of Section 10 of the Illinois Central Gulf's Merger Agreement. Under Section 10 a separation (sic) allowance of 12 months pay must be given to those 65 and under who request it, in seniority number order, if an excess of protected employees occurs. On April 6, 1983 I requested a 12 month separation (sic) allowance under Section 10 of the Merger Agreement, stating that the offer of April 4, 1983 which ran through April 15, 1983 was in violation of the Merger Agreement. My requests were denied by the Illinois Central Gulf, thus causing me to file a claim through the Brotherhood of Railway, Airline and Steamship Clerks Union. The General Chairman W. C. Woods, of the BRAC local wrote August 1, 1984, informing me of my grievances denial by the highest Carrier Officer. Therefor (sic) I am respectfully requesting 12 months salary which is what I was denied by the ICG's erroneous resignation offer of April 4, 1983.

OPINION OF BOARD: The basic facts are clear. The Claimant in this case was a Clerk in Chicago, Illinois. From April 4, 1983, through April 15, 1983, the Company offered all protected Clerks six (6) or seven (7) months' severance pay, depending on whether the payment was lump sum or amortized, in exchange for that Clerk's resignation. The Claimant requested severance pay but instead contended he was entitled to 12 months' severance pay pursuant to Section 10 of the Merger Protection Agreement, which states in pertinent part as follows:

"Section 10 - Separation Allowance

(a) Inasmuch as the New Company may have an excess number of 'Protected Employees' in any given zone as established by this Agreement, the New Company may provide for the payment of allowances to 'Protected Employees' who shall resign from the service so as to create whatever vacancies may be needed to effectively utilize the services of the force of 'Protected Employees.' If the New Company exercises the option provided in this Section, it shall offer the opportunity to resign and accept a separation allowance to 'Protected Employees' in seniority order in the home zone involved in lieu of all other protection and benefits provided under this Agreement.

(b) The amount of the separation allowances shall be based upon the age of the 'Protected Employee' as of his nearest birthday on the date such allowance is offered. The amount of such allowance shall be:

<u>ALLOWANCE</u>	
Age 65 and under	12 Months' pay
Age 66	10 Months' pay
Age 67	8 Months' pay
Age 68	6 Months' pay
Age 69 and over	4 Months' pay

at the rate of the position last occupied or protected rate, whichever is higher."

The Company denied his request and after appeal the matter is before this Board.

In reviewing the record, it is the conclusion of the Board that regardless of the disputed meaning and application of Section 10, there is no "claim" before the Board over which we can properly assert jurisdiction. This is because the Claimant on November 1, 1984, signed the following "resignation and release."

"I, Norman Ray Stevens, hereby resign from the service of the Illinois Central Gulf Railroad effective 11/2/84. I hereby release and forever discharge said Illinois Central Gulf Railroad Company from any and all claims, demands, grievances and causes of action of any nature, kind, character, or description, either at common law or under any State or Federal statute.

It is understood that the consideration for this Resignation and Release, is the payment to me by the Illinois Central Gulf Railroad Company the sum of \$13,582.08, less state and federal taxes.

I further represent that before signing this Resignation and Release, I have fully informed myself of its contents.

This Resignation and Release signed this 1st day of November, 1984."

It has long been held that in view of such agreements, the matter is considered settled for the purposes of our authority. For instance, it was stated in Third Division Awards 19527, 19528 and 19530:

"This Board has consistently recognized that an employee is bound by such a settlement and release, and that in the face of such a settlement and release the disputes coming thereunder are deemed to be adjusted and this Board has no jurisdiction. It is not necessary for the Board to deal with the substantive issue raised in these dockets as the issue has been made moot."

Also see Awards 20832 and 20247.

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 Claim is moot.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: _____


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 12th day of December 1986.