

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31813
Docket No. CL-32199
96-3-94-3-609**

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

**(Transportation Communications International Union
PARTIES TO DISPUTE: (
(National Railroad Passenger Corporation (AMTRAK)**

STATEMENT OF CLAIM:

"Claim of the System Committee of the Organization (GL-11113) that:

(a) Carrier violated the provisions of the April 16, 1987, CETC Agreement on or about July 26, 1993, when it refused to pay Carole Rogers \$25,000 after acknowledging her entitlement to a separation allowance in that amount.

(b) Carrier shall now pay Carole Rogers \$25,000 pursuant to the CTC Agreement."

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.

This dispute concerns the application of the April 16, 1987 CETC Agreement made between the Carrier and the Organization. The initial portion of the Agreement reads as follows:

"I. A. In conjunction with the implementation of each phase of CETC/CTC, Amtrak will offer separations to the number of employees specified in Attachment 'A'; however, the separations are limited to those in active service, as defined herein, in the geographical area which is involved in the Phase of the program being implemented, and to the number of separations identified in Attachment 'A'.

B. The separations will be offered by dated notice only to employees with the equivalent of 5 years of service with BRAC seniority on the date of the offer. The separation allowance will be in the amount of \$25,000.

C. Separations will be offered first to active TC employees, and subsequently to active clerical employees, on the BRAC-TC Division rosters in seniority order who qualify in accordance with paragraph 'A'.

D. Active service means employees in a working status in the clerical and telegrapher crafts, except that employees on fully excepted positions will not be eligible. The period in which an employee must have active service will be a fourteen calendar day period during which time applications for separation will be accepted. . . ."

The Claimant held District II seniority of April 8, 1974 on the Northeast Corridor Roster. She applied for the \$25,000 separation allowance, which was eventually denied to her by the Carrier. The Organization contends that she was properly entitled to such payment.

Section I.C. of the April 16, 1987 Agreement unequivocally limits the offer of "separations" (with an accompanying monetary allowance) to "active TC employees" and "active clerical employees." The Carrier contended, within the claim handling process on the property, that the Claimant did not meet the criterion of Section I.D. of being in "active" service; that she was not in "working status;" and that the Claimant, while retaining seniority, nevertheless had sufficient seniority to enable her to hold an active position had she so desired.

The Board concurs there is no showing that the Claimant was an "active employee" in the period of availability for application to receive the separation allowance. In its defense of the Claimant, the Organization refers to five other employees (the Carrier says it is four employees) who allegedly were found eligible for the separation allowance and who at the time were on leave of absence for various reasons. The Board is not called upon to determine the status of employees on leave. Suffice it to say that the Claimant, whatever her status, was not on leave of absence. As a result, these instances do not provide support for the Claimant.

The dispute, nevertheless, has three other separate and distinct aspects which require discussion.

The first concerns the fact that the Claimant was advised that she was eligible; she was actually mailed a \$25,000 check (which the Carrier immediately thereafter advised her not to cash); and she was, at various times thereafter, advised that she continued to be eligible for payment.

The second concerns whether the Claimant was granted an exception by the Carrier to the eligibility requirements.

The third involves an ongoing disagreement, both prior to and during the claim handling procedure, as to whether an employee is required to sign a release form in order to receive a payment of this type and, if the employee does so, how extensive is the statement that the employee "relinquish all claims against Amtrak."

As to the first point, it is of course regrettable that the Claimant would be advised and later assured of her eligibility for the \$25,000 separation allowance, only to have the Carrier later contend that this was in error and that, in its view, the Claimant was not eligible after all.

If it is demonstrated that the offer of payment and indeed the actual transmittal of the check were in error, such cannot give the Claimant a right to the allowance which she would otherwise not have. Entitlement cannot depend solely on the belief that an offer, once having been made, must be effectuated, even if error is later confirmed.

As to the second point, the Organization relies on information in a December 2, 1993 letter from the Vice General Chairman to the Division Manager-Labor Relations. This letter stated in pertinent part as follows:

"Shortly after the initial posting period you [the Division Manager-Labor Relations] met with myself in your office, Philadelphia 30th Street Station, for the purpose of determining eligibility of the various applicants. The determination, with my agreement, was that [the Claimant] was eligible and would be considered a successful applicant for the CETC Separation Allowance. At that meeting you questioned her status and it was explained to you that [the Claimant] was in an unassigned status in accordance with Rule 10(g) of the TCU/NRPC Corporate Clerical Agreement. . . ."

The record is barren of any document to confirm the Vice General Chairman's account of the "agreement" that the Claimant "was eligible and would be considered a successful applicant." Further, neither the Organization nor the Carrier offered the Board any specific rationale as to the reason for making an exception for the Claimant. It could not have been on her "unassigned" status, because the only reading which can be given to the above-quoted letter is that the Claimant's unassigned status was discussed only after the "agreement" had been made.

It is reasonable to assume that the "agreement" (which differs from a unilateral dispensation by the Carrier) was based on some consideration for both parties. For the Claimant, it was, of course, eligibility for the payment. For the Carrier, the Board can imagine any of several considerations, but this is mere speculation. Given these circumstances, it can only be concluded that the conditions were not met under the orally made "agreement" or that there was never a true meeting of the minds. Thus, the Board is without authority to go beyond the clear and specific terms of the CETC Agreement.

As to the third point, the parties argue as to whether the CETC Agreement requires an employee to sign a release. There is also an allegation that the Carrier was seeking to have the release signed in order to negate the Claimant's pending action against the Carrier under Federal law. In view of the finding of the Claimant's basic ineligibility, these questions are moot as to this claim. The Board thus has no basis to comment on this aspect of the matter.

AWARD

Claim denied.

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 26th day of December 1996.