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**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33633
Docket No. TD-33925
99-3-97-3-438**

The Third Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

(American Train Dispatchers Department/International
(Brotherhood of Locomotive Engineers
PARTIES TO DISPUTE: (
(National Railroad Passenger Corporation (AMTRAK)

STATEMENT OF CLAIM:

“This is an appeal from decision of E. V. Walker, General Manager, Mid-Atlantic Division, dated May 7, 1996 in which Claimants Shertzer and Jacelin were denied receipt of lump sum payments as provided by Paragraph 5 of Memorandum of Agreement dated February 10, 1986.

The Carrier shall be required to provide lump sum payments of \$3,000 to each Claimant as requested.”

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 involves the entitlement of Claimants' to a lump sum payment in lieu of lodging and meal reimbursement expense under the provisions of a Memorandum of Agreement (MOA) dated February 10, 1986, entered into by the parties upon the closing

of the Power Director Office in Baltimore and the transfer of work to the Philadelphia office at that time. Under the terms of Letter No. 4 to that MOA, the Claimants had their benefits in the Philadelphia office protected until either the special duty positions they held in Baltimore were abolished or they voluntarily exercised their seniority. The Claimants remained working as Power Directors on special assignment in Baltimore until their positions were abolished in November 1994, at which time they began training in Philadelphia. That training lasted until September 11, 1995, when they were instructed to exercise their seniority.

The relevant portions of Paragraphs 4 and 5 of the MOA are reprinted herein.

“4. The Corporation will reimburse the involved employees for actual, necessary living expenses (meals and lodging) which may be incurred incident to such pre-qualification. Reimbursement for meals will not exceed the amounts set forth in paragraph 5 of this Agreement.

5. Employees of the Baltimore Power Director Office who are awarded positions in the Philadelphia Power Director Office pursuant to paragraph 2(a) of this Agreement will, until the change of residence takes place, but not to exceed a period of sixty (60) calendar days from the effective date of award, be provided with suitable lodging. The Corporation on those same days will compensate the employee for actual receipted meal expenses (the meal expense not to exceed \$5.00 for breakfast, \$6.00 for lunch and \$12.00 for dinner). In lieu of the aforementioned lodging and meal provisions, affected employees may elect to receive a \$3,000 lump sum payment.”

The record reflects that a claim was filed requesting the lump sum payment under the MOA on March 10, 1996. By letter dated May 7, 1996, the Carrier denied the claim for compensation benefits under the MOA on the basis that it was time barred since the 60 day period to opt for the lump sum payment commenced, at the latest, on September 11, 1995, when the Claimants were advised to exercise their seniority. The Carrier did note that if the Claimants had receipts for meals during the applicable 60-day period, it would have them reimbursed.

The Organization appealed the denial on July 5, 1996 indicating that there were no time limits for election of the lump sum benefit. The claim was conferenced in August, 1996, and the Carrier's denial letter of September 4, 1996, noted that the claim

was untimely under the 60-day time limit contained in Rule 7, since the occurrence beginning the claim period was either the November, 1994 job abolishment or, at the latest, the September 11, 1995, exercise of seniority into the position in Philadelphia. The Carrier also declined the claim on its merits, noting that the lump sum option under the MOA had to be made within the 60-day reimbursement period and not thereafter.

The Organization contends that the March 10, 1996, letter was a request for the lump sum benefit, which did not ripen into a claim until such request was denied by the Carrier on May 7, 1996, citing Third Division Award 26286. It argues that there was no time limit in the MOA for the actual filing of the option request, and that its claim was initiated within the appropriate 60-day period under Rule 7 after it ripened on May 7, 1996.

The Carrier argues that two separate 60-day time periods were violated by the Organization herein. First, it contends that the right to obtain the lump sum option expired 60 days after September 11, 1995 (at the latest), and possibly as early as 60 days after their positions were abolished in November 1994 under the terms of Letter No. 4 to the MOA. The Carrier asserts that the terms of the MOA clearly provide the time period within which an election is to be made, and that the Claimants were not permitted to wait until after the expiration of that reimbursement period to select the in lieu payment option. The Carrier also contends that the Claimant's right to file a claim under Rule 7 for nonpayment of the in lieu lump sum expired 60 days after the reimbursement period, or January 11, 1996, at the latest, and that this procedural defect requires dismissal of the claim. Under either circumstance, the Carrier alleges that the Claimants are untimely in seeking the lump sum payment, and notes that an offer to reimburse actual meal expenses during the period does not change the time limits of the Agreement. It is undisputed that no proof of actual meal and lodging expenses were ever submitted to the Carrier on the Claimants' behalf.

A careful review of the record convinces the Board that the Carrier was within its rights to deny the Claimants' request for a lump sum payment in lieu of the lodging and meal provisions of the MOA. Under Letter No. 4, the Claimants became entitled to the benefits of the MOA upon abolishment of their special duty positions in November 1994. The clear intent of Paragraphs 4 and 5 of MOA is to provide compensation for actual, necessary living expenses for employees affected by the consolidation until they change their residence or for the first 60 calendar days in their new position, whichever

is shorter. An election of a lump sum payment of \$3,000 in lieu of actual expenses was offered. As noted, the Claimants came under the terms of the MOA in November 1994.

While the MOA does not specify that the election has to be made prior to the expiration of the 60-day period, such understanding must be implied from the very nature of an election of remedies. By the 60th day, an employee could determine whether it would be more financially beneficial to opt for the lump sum payment or the actual, necessary living expenses. It would be reasonable for the Carrier to expect such election to be made within that time period, and unreasonable for an employee to prolong such election until more than 17 months after the covered time period for reimbursement. The Organization's initial request for payment indicates that the Claimants waited 17 months for receipt of their MOA benefits. There is no dispute that they never made an election to receive a lump sum payment within the 60 days after they began their training in Philadelphia in November 1994, or within the 60 days after they were qualified for the position and exercised their seniority on September 11, 1995.

The Organization offered no evidence to show that employees who received these benefits at the time of the consolidation in 1986 were given more than 60 days to opt for a lump sum payment in lieu of actual expenses. It is clear that Letter No. 4 puts the Claimants in the same position that employees subject to the original transfer of work were in. Under such circumstances, the Organization failed to show that the Claimants fulfilled the requirement of timely selecting the lump sum payment option rather than receiving actual expenses for the 60-day period. The Carrier's offer to make belated payment on actual receipted expenses does not change the fact that the Claimants forfeited their right to the lump sum option after expiration of the 60-day reimbursement period.

Since this claim seeks only the lump sum payment, and not reimbursement for actual meal and lodging expenses in the appropriate 60-day period, it must be denied on its merits. Having found that the claim lacks merit, it is unnecessary for the Board to determine when the claim ripened and whether it was timely filed under Rule 7.

AWARD

Claim denied.

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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 16th day of November 1999.