

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35360
Docket No. MS-34639
01-3-98-3-296**

The Third Division consisted of the regular members and in addition Referee Robert M. O'Brien when award was rendered.

(Sieu Mei Tu
PARTIES TO DISPUTE: (
(Pacific Fruit Express Company / Union Pacific Railroad

STATEMENT OF CLAIM:

“A. Pursuant to:

- i ‘Mediation Agreement’ dated February 7, 1965, between Brotherhood of Railway, Airline and Steamship Clerk’s Union (BRAC) and SP/PFE.**
- ii ‘TOPS Agreement’ dated September 16, 1971 between Brotherhood of Railway, Airline and Steamship Clerk’s Union (BRAC) and SP/PFE.**
- iii Agreement effective January 1, 1980 between Brotherhood of Railway, Airline and Steamship Clerk’s Union (BRAC) and SP/PFE.**
- iv Implementing Agreement No. NYD-217 between SPTC/UP and Allied Services Division /TCU Transportation Communications Union.**
- v Letter faxed December 20, 1996 from Richard M. Costa, District Chairman ASD to Members of District 890.**

Furloughed employee Sieu Mei Tu is entitled to fully protected benefits from the date she was placed on furlough, October 9, 1985 (Exhibit page 1139 and 0759) to the date of award hereunder, including fall salary, including vacation pay, health and welfare payments, contributions to Railroad Retirement Fund and fully vested rights and benefits hereunder (Exhibit page 0949), award of separation benefits on merger of SPTC and UP. (Exhibit page 1101)”

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.

In May 1962, the Claimant began working for Pacific Fruit Express. She worked a number of clerical positions in the San Francisco general offices. The Claimant was a member of the Brotherhood of Railway, Airline and Steamship Clerk's Union [now the Allied Services Division of the Transportation Communications International Union]. On October 2, 1985, the Claimant was furloughed from her employment with Pacific Fruit Express. She has not worked for Pacific Fruit Express since her furlough. Pacific Fruit Express Company was a wholly owned subsidiary of Southern Pacific Transportation Company (Southern Pacific).

In 1996, the Surface Transportation Board approved the merger of the Southern Pacific and the Union Pacific Railroad Company (hereinafter referred to as the Union Pacific or the Carrier) in Finance Docket No. 32760. The Surface Transportation Board imposed New York Dock Conditions on that merger. Pursuant to Article 1, Section 4 of the New York Dock Conditions the Allied Services Division of the Transportation Communications Union and the Union Pacific reached an Implementing Agreement (NYD-217) on December 18, 1996, to effect the merger of the Union Pacific and Southern Pacific properties. Among other things, NYD-217 granted employees who were affected as a result of the merger the right to elect from the employee protective benefits in Article I, Section 2 of the New York Dock Conditions.

On January 27, 1997, the Claimant's attorney wrote to the Carrier seeking a separation allowance for the Claimant under the New York Dock Conditions. The Claimant's attorney stated that the Claimant elected to receive severance pursuant to

Section 3 of NYD-217. The Carrier denied the Claimant's request for a separation allowance under NYD-217 contending that she was ineligible for benefits under that Merger Implementing Agreement because she was not impacted by the merger between the Southern Pacific and the Union Pacific.

It should be noted that the Claimant was never an employee of either the Southern Pacific or the Union Pacific Railroad. Rather, she had been employed by Pacific Fruit Express that was not a party to the merger. Moreover, she had been furloughed from Pacific Fruit Express Company for over 11 years prior to the merger.

Prior Awards of the Board have ruled that the Board lacks jurisdiction to resolve claims under the New York Dock Conditions. (See, for example, Third Division Awards 29317 and 29660.) The reasoning behind those Awards is sound. It should be noted that NYD-217, under which the Claimant seeks a separation allowance, prescribes a procedure for filing claims for protective benefits. It also embodies a procedure for resolving disputes over employee claims for protective benefits under New York Dock. That procedure, not this Board, is the proper forum for resolving such claims.

Based on all the foregoing, the Board lacks jurisdiction over the Claimant's claim for New York Dock protective benefits and the claim must be dismissed as a result.

AWARD

Claim dismissed.

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 20th day of March, 2001.