Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 35715
Docket No. MW-34244
01-3-97-3-795

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Canadian Pacific Lines (on lines operated in the
(States of Maine and Vermont in the U.S.A.)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when it failed to effectuate severance payments to Messrs. R. L. Rivard, A. Deos, M. A. Tinker and R. A. Lyon in accordance with the Agreement signed on September 27, 1996.

(2) The claim as presented by System Federation General Chairman J. J. Kruk on December 16, 1996 to Director, Labour Relations D. Brazier shall be allowed as presented because said claim was not timely disallowed by Director, Labour Relations D. Brazier in accordance with Rule 18.2.

(3) As a consequence of the violations referred to in Parts (1) and/or (2) above, the Claimants shall be allowed the separation allowance provided for within the Agreement dated September 27, 1996."

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.

As a result of a sale by the Carrier of its interest in operating lines in Vermont to the Northern Vermont Railroad Company on September 28, 1996, the parties entered into a September 27, 1996 Memorandum of Agreement which states, in pertinent part:

> "In an effort to accommodate the concerns of both the employees and the Canadian Pacific Railway Company in providing employment opportunities and protective benefits for employees affected by the sale of the lines in Vermont to the Northern Vermont Railroad Company, Incorporated, the following is agreed upon:
>
> 'I. Employees who resign to accept employment with the Northern Vermont Railroad Company at the first offer of employment will receive a lump sum separation payment of $10,000.
>
> * * *
>
> III. Those employees who are unable to secure a position with the new operator or who did not elect to accept a position with the Northern Vermont Railroad Company may elect to terminate their employment with the Canadian Pacific Railway Company for a lump sum Severance Allowance of $32,000.
>
> This Severance Allowance would be in lieu of all other benefits to which the employee may otherwise be entitled.'"

The Claimants were in furloughed status prior to the effective date of the Memorandum of Agreement. According to the Carrier, Rivard had been on furlough since April 22, 1995; Lyon since March 2, 1993; Tinker since September 22, 1995; and Deos since October 11, 1995. Further, according to the Carrier, Deos worked on six days in 1996.

The Claimants were unable to secure positions with the new operator through use of their seniority. Nor were the Claimants offered positions with the new operator. The Claimants' requests for severance allowance payments under the Memorandum of Agreement were denied by the Carrier. In denying those requests, the Carrier stated that "[i]n order to be entitled to a severance payment under this agreement you must have been working in a permanent position which was abolished as a result of the sale of the line in Vermont to the Northern Vermont Railroad Company."

On the property, the Organization took the position that the Claimants were entitled to severance allowance payments under the plain language of the Memorandum of Agreement because they had no other options for exercising seniority. In denying the Claimants were entitled to the severance benefit, on the property the Carrier took the position that the Claimants "... were all on furloughed status at the time of the sale and had only worked some sporadic relief work in the recent past [and t]herefore, they did not have their jobs abolished due to the sale."

The burden is on the Organization to demonstrate a violation of the Memorandum of Agreement. That burden has been carried.

Because the Claimants could not secure positions with the new operator, the benefits of Paragraph I of the Memorandum of Agreement ($10,000 separation payment for resigning from the Carrier to take a position with the new operator) were not available to them. The Claimants' entitlements, if any, were under Paragraph III of the Memorandum of Agreement.

Paragraph III of the Memorandum of Agreement is clear - "[t]hose employees who are unable to secure a position with the new operator or who did not elect to accept a position with the Northern Vermont Railroad Company may elect to terminate their employment with the Canadian Pacific Railway Company for a lump sum Severance Allowance of $32,000." The Claimants were employees and they were unable to secure a position with the new operator. The fact that the Claimants were in furloughed status is contractually irrelevant. The Memorandum of Agreement makes no distinction between furloughed employees and employees who were actively working - the only reference is to "employees." As far as the clear language of the Memorandum of Agreement is concerned, although in furloughed status, the Claimants were still "employees." The Claimants are therefore entitled to the $32,000 severance allowance.

There is no requirement negotiated by the parties placing a precondition for receipt of benefits that, as the Carrier stated to the Claimants in denying their requests for severance, ". . . you must have been working in a permanent position which was abolished as a result of the sale of the line in Vermont to the Northern Vermont Railroad Company." Had the parties intended such a precondition, one would expect to find such an intent expressed in the plain language of the Memorandum of Agreement.

Nor is there any requirement in the Memorandum of Agreement for there to be a causal nexus between the precipitating event and the entitlement to benefits. Awards such as Second Division Award 12966 are clearly distinguishable from the language negotiated by the parties in this case. Award 12966 addressed the standards under the September 25, 1964 Agreement with the well-accepted requirements under that language for a "showing of causal nexus of their furlough to the . . ." precipitating event. See also, Third Division Award 31895. That nexus requirement flows from the language in the September 25, 1964 Agreement and other such Agreements which state that protective benefits exist for employees "as a result of" specified changes in a Carrier's operations. As the Carrier states in its Submission to this Board, "[t]his was a voluntary arrangement since no labor protection was imposed by the Surface Transportation Board." The "voluntary arrangement" entered into by the parties did not adopt causal nexus language typically found in protective Agreements such as the September 25, 1964 Agreement. Instead, the parties merely stated that "employees" who could not secure positions "may elect to terminate their employment with the Canadian Pacific Railway Company for a lump sum Severance Allowance of $32,000." That is the language the parties negotiated. That is the language the parties must live with. Had the parties intended otherwise, they could have easily said so.

Nor does the preamble language asserting the desire of the parties for ". . . providing employment opportunities and protective benefits for employees affected by the sale of the lines in Vermont to the Northern Vermont Railroad Company . . ." change the result. Insofar as the Claimants may have had potential recall rights or future work opportunities, the Claimants were "affected by the sale of the lines." But, in any event, the language "affected by the sale of the lines" does not equate to an Agreement by the parties that ". . . you must have been working in a permanent position which was abolished as a result of the sale of the line in Vermont to the Northern Vermont Railroad Company" as asserted by the Carrier.

Nor can a distinction be made concerning the Claimants' furlough dates. Rivard, Tinker and Deos were furloughed in 1995, although Deos worked for six days in 1996. Lyon was furloughed in 1993. Given the clear language in the Memorandum of Agreement providing in Paragraph III that "employees who are unable to secure a position with the new operator . . . may elect to terminate their employment . . . for a lump sum Severance Allowance of $32,000," the Board has no authority to make any allocations other than the clear total benefit provided for by the parties for "employees."

A basic tent of contract construction is that the clear meaning of language must be enforced even though the results are harsh or contrary to the original expectations of one of the parties. In such cases the result is based upon the clear language of the contract, not upon the equities involved. Clear language exists in Paragraph III of the Memorandum of Agreement entitling the Claimants to the $32,000 severance allowance. The Board has no authority to change or ignore that clear language. The Claimants shall be paid that severance allowance.

Based on our finding a violation on the merits, the Organization's argument that the Carrier did not respond to the claim in a timely fashion is moot.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 24th day of October, 2001.