Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 36804
Docket No. MS-37503
03-3-02-3-504

The Third Division consisted of the regular members and in addition Referee Robert Perkovich when award was rendered.

PARTIES TO DISPUTE: (M. B. Rogers, G. A. Seconsky and T. J. Triplett
(
(Canadian National Railway (former Grand Trunk
(Western Railroad, Inc.)

STATEMENT OF CLAIM:

"The Canadian National Railway (Grand Trunk District) breached a contract and violated the Transportation Communications Unions agreement dated August 31, 1995. The following articles involved are: Article II work rules section (D) 1 (line one), "The GTW will offer employees the option to elect voluntary furlough status."

Article II (D) 1 (last paragraph) "Protected employees who were in either active or furloughed clerical status on the date of the ninety (90) day transfer notice is issued and remain in either active or furloughed clerical status until the date positions are abolished or transferred are eligible to apply for this voluntary furlough allowance.

Article II (D3) (First Paragraph)

An employee may elect a voluntary furlough status not subject to recall service and receive a monthly furlough allowance equivalent to (60%) percent of the employees average clerical monthly earnings.

Article II (D3) (Line 17)

This voluntary furlough allowance will not be subject to subsequent wage increases and will terminate seven (7) years from the date of furlough or when an employee is first eligible for an unreduced annuity under the Railroad Retirement Act or is deceased, whichever occurs first.

Article II (D4) (Line 3)

Voluntary furlough status will be given to the senior employees making application therefor.

Article II D12

An employee who requests and receives voluntary furlough status ceases to be eligible for the voluntary separation allowance provided in section C herein unless recalled and affected by a subsequent transaction.

The Canadian National Railway (Grand Trunk Division) violated the TCU August 31, 1995 agreement when and because they recalled G. A. Seconsky and T. J. Triplett back to active clerical duty on January 2, 2002 to Troy, Michigan (District Eleven). The carrier also forced severance upon M.B. Rogers.

Because of this violation and breach of contract (dated August 31, 1995 T.C.U. Agreement) the Canadian National Railway (Grand Trunk District) should restore G. A. Seconsky, T. J. Triplett and M. B. Rogers back to their elected option #3 signed and dated by M. J. Kovacs, Senior Manager Labor Relations, May 11, 2000. This signed application states: "A voluntary furlough allowance equivalent to sixty (60%) percent of previous clerical twelve month earnings per Article IID(3), not to exceed $53,000.00 plus health, welfare, dental and continued railroad retirement taxes. Under this option #3 employees are not subject to recall to service.

The Canadian National Railway should also extend the voluntary furlough agreement option number three (3) each day the involved employees are in active service, (severance), or compensate them the sixty (60%) percent voluntary furlough agreement rate of pay for each day in active service, above the active service rate of pay beginning from January 2, 2002 until June 22, 2007 (The termination date of the contract option #3) or until restored to their elected contract."

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.

On August 31, 1995 the Carrier and the Transportation Communications International Union (Organization) reached an Agreement providing that employees who were the subject of force reductions could choose one of three options: a voluntary furlough allowance of 75% of monthly compensation subject to recall to service (VFA 75%) a voluntary furlough allowance of 60%, for a period not to exceed seven years, without being subject to recall to service (VFA 60%) or a voluntary separation allowance (VSA) of $60,000.

In March 1997, the Claimants' clerical positions were abolished, among others, and they chose the VFA 75%. In January 2000 they were recalled to service, only to be subject to force reductions again in June of that same year. With this second reduction, however, they, and others, chose the VFA 60%. Later a claim

arose, not involving the Claimants as to whether or not employees who chose one of the VFA's could subsequently choose the other after recall. The Carrier and the Organization ultimately reached an Agreement and the Claimants were informed that pursuant to that Agreement they could either choose to return to service or the VSA. The Claimants herein chose the former, but allege in their claim that the Carrier violated their rights by removing the VFA choices that they had before them with the August 31, 1995 Agreement.

The Board does not agree. The Carrier and the Organization contemplated whether employees could reconsider their choice under the August 31, 1995 Agreement and made that intention clear with a joint interpretation of the Agreement that provides as follows:

> "Question #16 – If an employee recalled from a VFA opts to return to a VFA when forces are reduced, under Article II(D)(8), can his Voluntary Furlough Allowance as originally computed under Article II(D)(2) and (3) be reduced?
>
> Answer – No, the employee would receive the original VFA but could choose to have a new VFA computed?"

Thus, the parties contemplated and agreed that if an employee returned to service after choosing one type of VFA, he or she could only to seek to have the VFA recomputed. They did not contemplate anything more, such as seeking a different VFA choice in its entirety. This interpretation by the parties must be deferred to because they know best their intentions as set forth in their Agreement. The claim, therefore, must be denied.

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 29th day of December 2003.