

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37032
Docket No. CL-37744
04-3-03-3-65

The Third Division consisted of the regular members and in addition Referee Rodney E. Dennis when award was rendered.

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

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-12963)
that:

Carrier violated the Amtrak-NEC Clerks Rules Agreement on July 18, 2001, when it denied to Claimant Wendell Thompson, an employee of the Carrier's, the June 1, 1998 change in Commissary of Operations Separation Allowance of \$35,000.

Claimant now be made whole of the change in Commissary Operations Separation Allowance as agreed to by the Carrier's former Division Manager of Labor Relations, Metropolitan Division, Mr. Ron Denzel, in a letter to Claimant Thompson, indicating that he had been a successful applicant to receive the separation allowance.”

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.

At the time of the incident that gave rise to this case Claimant Wendell L. Thompson was a Commissary Worker. On February 17, 1999, the Carrier offered Separation Allowances to certain commissary employees in New York City and at other locations across its system. The Claimant applied for the Separation Allowance and on March 17, 1999, he was notified that he would receive the allowance. On April 7, 1999, the Claimant was notified that his Separation Allowance would be effective April 17, 1999. He was further notified to make arrangements to report to the Division Manager Labor Relations Office on April 19, 1999, to pick up his Separation check and sign a Separation Leave Form. The Claimant did not appear to receive the check, nor did he indicate why he had not appeared.

The record reveals that the Claimant had received an on-the-job injury on March 8, 1999. This apparently happened between the time the Claimant indicated his desire to take the buy-out and the time he was approved for the buy-out. The injury resulted in a FELA claim that took over two years to conclude. On May 3, 2001, the Carrier received from the General Chairman a General Release Agreement from the Claimant's Attorney. The Claimant's Attorney contends that the Carrier is responsible for the payment of the FELA settlement, as well as the Separation Allowance approved by the Carrier on March 17, 1999.

The Carrier responds by alleging that the claim for a buy-out payment at this point is stale and that the Agreement not to return to work signed by the Claimant when he received a settlement of his FELA claim excludes the Carrier from any other monetary obligation, including the Separation Allowance in question.

After an extensive review and discussion of this case, the Board concluded that the issue is more appropriately decided in the courts, because numerous legal principles involving Contract Law are involved. The Board therefore dismisses this claim.

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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 18th day of May 2004.