SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES TO DISPUTE) Felipe Salazar, Jr., - Individual - (Formerly employed as switching clerk, AT&SF)
and
Atchison, Topeka and Santa Fe Railway Company

QUESTION AT ISSUE: The sole question to be submitted to the committee selected pursuant to Article VII of the Mediation Agreement is whether or not the provisions of the Implementing Agreement, dated July 25, 1969, apply to Mr. Salazar who was listed therein as a protected employee but who resigned from the Santa Fe Railway Company effective July 29, 1969, before he received notice of the existing Implementing Agreement.

OPINION OF BOARD: On January 8, 1968, Claimant's position as Station Accountant at Albuquerque was abolished. Predicated upon his January, 1950 seniority date, he was transferred to the position of Switching Clerk. Thereafter, a claim was filed by the Organization and docketed before our Board as Case No. CL-71-W; and in due time, mutually withdrawn by the parties.

Subsequently, on June 16, 1969, the Carrier served a notice on the Organization of its intent to transfer certain protected qualified employees to other locations and requested negotiations for the purpose of entering into an Implementing Agreement pursuant to the provisions of Article III, Section 1, of the February 7, 1965 National Agreement and the November 24, 1965 Interpretations thereto.

The parties entered into negotiations on July 22, 1969, in Chicago, and an Implementing Agreement was executed on July 25, 1969, with an effective date of September 1, 1969. Furthermore, Claimant was named therein as a protected employee on the New Mexico Division.

Commencing with July 21, 1969, a chain of unfortunate circumstances developed insofar as Claimant is concerned. On that date--July 21--he submitted the following letter to the Carrier, which was accepted on July 24, 1969, viz:

> This letter is to inform you that effective July 29, 1969 it is my intention to resign from A.T.&S.F. Railway Service.
>
> I have been offered a Civil Service position and after a considerable amount of deliberation, I have decided to accept it. This has been a very

> difficult decision for me to make and I shall always feel a certain amount of indebtedness toward the Railroad Industry for it has been very good to me and my family.
>
> I wish to thank you and the members of your staff for a very wonderful association that I have enjoyed during the years that I have worked for the Railroad.

Despite the aforementioned letter, on August 9, 1969, Claimant notified the Carrier that he desired to elect option 3, pursuant to Article V of the February 7, 1965 Agreement, i.e., resign and accept a separation allowance amounting to $9,035.10. On August 12, 1969, the Superintendent informed Claimant that since his resignation had been accepted previously, perforce, he was no longer entitled to make an election pursuant to the Implementing Agreement. Thereafter, on April 24, 1970, Claimant's attorney submitted the instant claim to the Superintendent requesting said separation allowance, which was duly declined by the Carrier.

A number of defenses were submitted by the Carrier in support of its contention that Claimant was no longer entitled to elect the option granting a separation allowance. Pursuant to Article II, Section 1, of the February 7, 1965 Agreement--an employee shall cease to be a protected employee in case of his resignation. In addition, the Carrier invoked the Time Limit Rule.

The Claimant, through his attorney, argues that the Time Limit Rule has no efficacy herein as the instant claim does not seek compensation. It merely requests an interpretation as to whether Claimant is qualified to elect his option under the Implementing Agreement.

Inasmuch as a procedural question has been raised by the Carrier, we are required initially to analyze that facet. As indicated, Claimant sought to elect a separation allowance on August 9, 1969, which was declined by the Carrier on August 12, 1969. Thereafter, Claimant failed to appeal said claim to the highest designated officer on the property as required by Rule 43(2) and (3) of the Schedule Agreement, until April 24, 1970.

Thus, the question arises whether a separation allowance is considered compensation. In our view, a separation allowance comes within the purview of compensation and, therefore, is subject to the Time Limit Rule. While we recognize equitable considerations may intervene which possibly could place a different interpretation on the instant claim, we are not clothed with the power to invoke those equitable maxims under which the Chancery Court functions. We are confined solely to interpreting the February 7, 1965 Agreement and Interpretations thereto.

Despite the fact that the instant claim requires dismissal on jurisdictional grounds we have, furthermore, carefully reviewed the merits of this dispute. However, in view of our conclusions above, it is our considered opinion that the claim should be dismissed as being procedurally defective for failure to properly process the appeal to the highest designated officer on the property as provided by the Schedule Agreement.

Award:

Claim dismissed.

Murray M. Rohman,
Neutral Member

Dated: Washington, D. C.
August 4, 1971