

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES) Transportation-Communications International
TO THE) Union
DISPUTE) and
) The Atchison, Topeka and Santa Fe Railway
) Company

QUESTIONS AT ISSUE:

1. Did the Carrier violate the provisions of the February 7, 1965 Mediation Agreement, as amended effective January 1, 1980, when it failed to pay protective benefits to H. I. Durham for the months of May, June, July, August and September, 1986?
2. Shall the Carrier now be required to pay Claimant's protective benefits for the months of May, June, July, August, and September, 1986?
3. Shall the Carrier now be required to pay a reasonable interest on the amount wrongfully withheld?

OPINION

OF THE BOARD: Claimant, a protected employee under the amended February 7, 1965 Job Stabilization Agreement effective on January 1, 1980, was displaced from her regular position on or about May 5, 1986. Since she held insufficient seniority to obtain another position, Claimant was reduced to off-in-force-reduction status. Claimant filed a Rule 14-B notice indicating that she was available to perform extra work and fill short vacancies. She also notified the Carrier that she would accept recall to any position on her seniority district. More importantly, Claimant reminded the Carrier that she could not fill a Grade 3 position or perform Grade 3 work due to a prior back injury. Beginning on April 18, 1985, Claimant's personal physician had restricted Claimant from performing Grade 3 work or

any job which required heavy lifting. The restriction did not bar Claimant from performing ordinary clerical work.

While the record is unclear, Claimant apparently performed extra work and filled temporary vacancies during May and June, 1986. The Carrier paid her protective guarantees for May and June, amounting to \$627.68 and \$706.17, respectively. Since Claimant's daily protected rate was \$103.44, she obviously performed some compensable service during the two months. Subsequently, the Carrier recovered the sums paid to Claimant in May and June, 1986 and denied her applications for protective benefits covering July, August, and September, 1986. The Carrier relied on Article IV, Section 5 of the February 7, 1965 Job Stabilization Agreement, contending that Claimant's physical disqualification from Grade 3 positions was tantamount to a disability. The Organization responded that the Carrier's interpretation of Article IV, Section 5 was overly broad because the provision permitting the Carrier to suspend protective benefits was intended to apply to those disabilities which prevent an employee from coming to work. Furthermore, the Organization charged that the Carrier could not show that Claimant failed to work on any day because nothing but Grade 3 positions or Grade 3 work was available to her.

Claimant's physician removed the medical restriction some time during September, 1986. Thereafter, the Carrier restored Claimant's protective benefits for the succeeding months but it

reaffirmed its refusal to pay her protective benefits covering May through September, 1986.

On December 23, 1986, Claimant voluntarily resigned from service in exchange for a lump sum payment. Claimant signed a release stating:

For and in consideration of the sum of \$38,070.00, subject to the usual deductions, the receipt of which is hereby acknowledged, I hereby knowingly and voluntarily resign from the service of The Atchison, Topeka and Santa Fe Railway Company and expressly release and relinquish unto said Railway Company all my rights as an employee, including any claims, seniority, Health and Welfare, and other rights and benefits which may heretofore have accrued to me as an employee of said Railway Company.

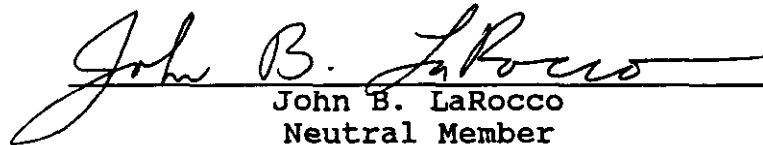
Upon executing the release, Claimant waived any rights she had against the Carrier as of December 23, 1986, which would include the claim herein. NRAB Third Division Award No. 26206 (Vernon). NRAB Third Division Award No. 20832 (Sickles). Special Board of Adjustment No. 570, Award No. 680 (Vernon). Nonetheless, the Organization argues that this Board should disregard Claimant's resignation and release because the Carrier's final declination of the claim on the property, dated January 9, 1987, did not allude to Claimant's December 23, 1986 release. While the Carrier should have raised the issue of the release in its January 9, 1986 correspondence, the defect was not fatal. Either party can raise a challenge to this Board's jurisdiction at any time because the issue of jurisdiction cuts directly to the fundamental power of this Board to adjudicate a dispute. Claimant triggered the claim by filing an application for protective benefits for July, August and September, 1986.

Since she commenced the claim, she also had the ability to extinguish her claim. Thus, when Claimant signed the release waiving any rights she had against the Carrier, she forever removed this case from our jurisdiction.

AWARD

1. Question at Issue No. 1 is dismissed.
2. Question at Issue No. 2 is dismissed.
3. Question at Issue No. 3 is dismissed.

Dated: April 14, 1989


John B. LaRocco
Neutral Member