

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 S. C. Hadley beginning June 26, 1986?
2. Shall the Carrier now be required to pay Claimant's protective benefits for the period June 26, 1986, and forward?
3. Shall the Carrier now be required to pay a reasonable interest on the amount wrongfully withheld?

OPINION

OF THE BOARD: Claimant holds an October 6, 1969 seniority date on the Purchases and Materials Department, Western Lines District No. 2 Seniority Roster. Sometime in 1978, Claimant suffered a severe back sprain. Consequently, Claimant's personal physician prohibited her from lifting more than 25 pounds. Because of her back ailment, the Carrier disqualified Claimant from performing Grade 3 work.

Claimant is a protected employee under the amended February 7, 1965 Job Stabilization Agreement effective on January 1, 1980.

On June 25, 1986, the Carrier abolished Claimant's Timekeeper position. Since Claimant lacked the fitness and ability to fill an available stenographer job, Claimant went into off-in-force-reduction status. Claimant filed the appropriate

form indicating she was available to fill short vacancies and perform extra work on her seniority district. However, Claimant specifically declared that she remained unable to perform Grade 2 or Grade 3 work. In addition, she indicated that she was unavailable to perform work outdoors or in the warehouse.

Claimant applied for protective benefits beginning the last week of June, 1986 and the Carrier declined her applications.

The Carrier cited Article IV, Section 5 of the February 7, 1965 Job Stabilization Agreement contending that Claimant's back sprain constituted a disability, justifying the suspension of her protective benefits. The Organization responded that the Carrier's interpretation of Article IV, Section 5 was overly broad because her back problem did not cause her to be absent from work. The Organization further charged that the Carrier could not point to any Grade 3 position or Grade 3 work which became available to Claimant while she was in off-in-force-reduction status. On the other hand, the Carrier asserted that, but for her incapacitation, Claimant could have filled short vacancies on Store Helper, Chauffeur and Janitor jobs.

On December 14, 1987, Claimant voluntarily resigned from service in exchange for a lump sum payment. Claimant signed a document stating:

For and in consideration of the sum of \$20,000.00, 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.

I understand and agree, in consideration of the above specified amount, that this voluntary resignation constitutes a complete relinquishment and surrender unto said Railway Company, of any and all my rights including seniority, Health and Welfare, and other rights and benefits which may heretofore have accrued to me as an employe of said Railway Company.

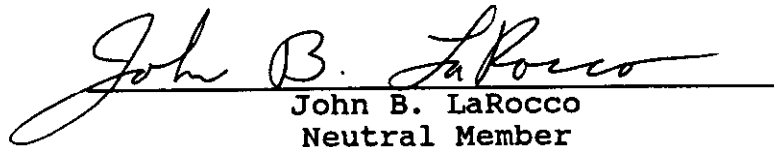
I further understand that this voluntary resignation constitutes full settlement and release of any and all claims of any nature, known or unknown, which I have or might have against said Railway Company, including, but not limited to, claims which derive from or are based on any aspect of my preceding employment relationship with said Railway Company or my resignation of such employment.

In consideration for a lump sum separation allowance, Claimant relinquished all rights she held against the Carrier as of December 14, 1987 which includes this claim. For the reasons more fully set forth in Award No. 474, we must dismiss this claim.

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