

Case No. SG-43-E

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES) BROTHERHOOD OF RAILROAD SIGNALMEN
TO THE) and
DISPUTE) CSX TRANSPORTATION, INC.

 (former C&O Marquette District)

QUESTION AT ISSUE

Claim on behalf of Signal Foreman William E. Mitchell that:

(a) Carrier violated the parties' C&O Railway Pere Marquette District Schedule Agreement, as amended, particularly Article V of the National Mediation Agreement of February 7, 1965 (Addendum 14) when on June 25, 1987, Carrier refused Claimant's request for a lump-sum separation allowance to become effective on or about August 3, 1987.

(b) Carrier now be required to allow Claimant William E. Mitchell, C&O ID No. 487295, a lump-sum separation allowance of \$40,348.80 pursuant to Article V of the National Mediation Agreement of February 7, 1965 and Section 27(b) of the parties' Implementing Agreement of April 14, 1987. Carrier file: 15-V-2-7-65(87-40) General Chairman file: 87-25-PM-BRS file No. Case No. 7347-C&O (P-M).

OPINION OF BOARD:

Claimant entered the Carrier's service on November 1, 1951. He was in active service as a signalman on the Pere Marquette on October 1, 1964.

CSX was created by a series of mergers that were approved by the I.C.C. and included acquisition of the rail subsidiaries to the Chessie System,

Inc. and the Seaboard Coastlines Industries, Inc. The I.C.C. imposed NYD conditions in the various mergers for protection of the employees.

Pursuant to notice dated September 1, 1986 and an Implementing Agreement dated April 14, 1987, the signal shop work performed at Barboursville, West Virginia (C&O), Cumberland, Maryland (B&O), Chicago, Illinois (B&OCT), Hagerstown, Maryland (B&O-WM) and Saginaw, Michigan (C&O-PM) was transferred to Savannah, Georgia. In Savannah, the work was consolidated with the CSX signal shop work consolidated previously at that site and was effective August 3, 1987. The existing signal shops were allocated a certain number of positions at the Savannah Signal Shop with the incumbents in the existing signal shops having prior rights in the Savannah Signal Shop.

Claimant was employed as a foreman at the Saginaw Signal Shop. His position was abolished effective 11:59 p.m. August 2, 1987.

On May 13, 1987, Claimant and other employees attended a meeting at which he was advised of his options under the April 14, 1987 Implementing Agreement. They were: (1) accept one of the four Lead Signalman/Signalman positions at Savannah allocated to the C&O-PM; or (2) any position available to them in the exercise of their seniority on the C&O-PM District. Employees accepting a position at Savannah would, by the terms of the Agreement, retain their seniority on their home districts. A foreman position in Detroit and a Lead Signalman position in Saginaw were available to Claimant. Claimant indicated that he wanted to resign with a separation allowance. The Carrier told him that was not a possible course of action.

Claimant filed a preference sheet with the Carrier indicating his choice of assignments:

- 1st: Separate
- 2nd: Savannah, Georgia - Foreman
- 3rd: Savannah, Georgia - Technician
- 4th: Detroit - Foreman

On July 29, 1987, Claimant was apprehended leaving the Carrier's property with company material. By letter dated August 7, 1987, Claimant was notified to attend a formal investigation on charges related to that incident. By letter dated August 11, 1987, Claimant retired from the C&O and CSXT Railroads. By letter dated August 13, 1987, the formal investigation scheduled for August 20, 1987 was cancelled.

Article V of the February 7, 1965 Agreement provides:

"Article V: Moving Expenses and Separation Allowances

In the case of any transfers or rearrangement of forces for which an implementing agreement has been made, any protected employe who has 15 or more years of employment relationship with the carrier and who is requested by the carrier pursuant to said implementing agreement to transfer to a new point of employment requiring him to move his residence shall be given an election, which must be exercised within seven calendar days from the date of request, to make such transfer or to resign and accept a lump sum separation allowance in accordance with the following provisions:

If the employe elects to transfer to the new point of employment requiring a change of residence, such transfer and change of residence shall be subject to the benefits contained in Sections 10 and 11 of the Washington Agreement notwithstanding anything to the contrary contained in said provisions and in addition to such benefits shall receive a transfer allowance of

four hundred dollars (\$400) and five working days instead of the 'two working days' provided by Section 10(a) of said Agreement.

If the employee elects to resign in lieu of making the requested transfer as aforesaid he shall do so as of the date the transfer would have been made and shall be given (in lieu of all other benefits and protections to which he may have been entitled under the Protective Agreement and Washington Agreement) a lump sum separation allowance which shall be computed in accordance with the schedule set forth in Section 9 of the Washington Agreement; provided, however, that force reductions permitted to be made under this Agreement shall be in addition to the number of employees who resign to accept the separation allowance herein provided.

Those protected employees who do not have 15 years or more of employment relationship with the carrier and who are required to change their place of residence shall be entitled to the benefits contained in Sections 10 and 11 of the Washington Agreement notwithstanding anything to the contrary contained in such provisions and in addition to such benefits shall receive a transfer allowance of four hundred dollars (\$400) and 5 working days instead of 'two working days' provided in Section 10(a) of said Agreement."

The position of the Organization is that Claimant is entitled to a separation allowance pursuant to Article V of the February 7, 1965 Agreement. The Organization asserts that Claimant is a protected employee under the provisions of the February 7, 1965 Agreement. The Organization contends that Claimant is entitled to whatever benefits inure to an employee who is required to displace another employee (as Claimant was required to displace an employee in Detroit in order to retain his seniority.) The Organization asserts that Claimant could not accept a position at Savannah without losing his Foreman's seniority and that he was therefore obligated to "either displace in the Detroit area or request a separation allowance."

The Organization contends that Claimant's forced choice of Detroit or separation allowance was the direct result of the Carrier's coordination of

its signal shops in Savannah. The Organization argues that this non-voluntary act of Claimant had its "causal nexus" in the Carrier's desire to coordinate its signal shops.

The Organization rejects the Carrier's position that Claimant resigned or that the Carrier did not request or require Claimant to resign. The Organization contends that Claimant did not resign voluntarily but rather was forced to do so by the Carrier's actions and that he did so within seven days.

The position of the Carrier is that Claimant is not entitled to a separation allowance as set forth in Article V of the February 7, 1965 Agreement. The Carrier maintains that the coordination of the previously coordinated CSXT (SBD) signal shops with the B&O, C&O, and B&OCT shops was a transfer of work and/or employees from one carrier to another subject to the New York Dock labor protective conditions, not a transfer of work and/or employees within a carrier's system, as authorized by the February 7, 1965 Agreement. Thus, the April 14, 1987 Implementing Agreement was not an "implementing agreement" as required by the February 7, 1965 Agreement but was an agreement required by Article I, Section 4 of New York Dock.

The Carrier further contends that Claimant was not required to transfer to a new point of employment that required a change of residence, and he did not do so. Moreover, it maintains, he would not be entitled to a separation allowance under Article V of the February 7, 1965 Agreement even if the April 14, 1987 Implementing Agreement had been an "implementing agreement" pursuant to the February 7, 1965 Agreement. The Carrier also contends that

Claimant's resignation effective August 3, 1987 (perhaps to avoid prosecution for unauthorized removal of Carrier material from Carrier property) deprived him of the status to bring the claim and, by implication, takes this matter out of the Board's jurisdiction.

After consideration of the entire record, the Board finds that the instant claim must be denied.

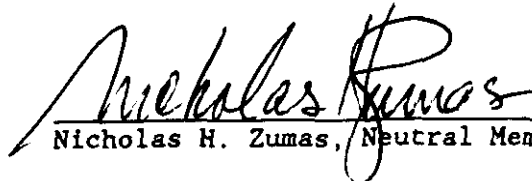
Claimant is a protected employee under the February 7, 1965 Agreement by virtue of having been in active service on October 1, 1964. But the February 7, 1965 Agreement lacks relevance and applicability to Claimant's circumstances here. The type of transaction under consideration falls within the direct purview of the New York Dock conditions. Moreover, the resignation of Claimant, whatever the reason or motivation, made effective on the day of the coordination (August 3, 1987) renders his claim and its filing outside the jurisdiction of the Board. This defense can be raised at any time and was properly presented by the Carrier at the hearing by the Board and referred to in the Carrier's submission.

AWARD

The answer to Question 1 is "No."

The answer to Question 2 is "No."

Date: 7-8-91


Nicholas H. Zumas, Neutral Member