PUBLIC LAW BOARD NO. 3540

Case No. 36

PARTIES TO DISPUTE: Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes

vs.

The Chesapeake and Ohio Railway Company

STATEMENT OF CLAIM:

"(a) That the Carrier has failed to properly and fairly compute the monthly protective benefits of the effected and hereinafter named clerical employees under the March 15, 1981 Memorandum Agreement and based on the New York Dock decision, (Finance Docket 28250 or 28905) when such employe had less than twelve (12) months service with the Carrier on the effective date of the Agreement and,

"(b) That the Carrier should now recompute the monthly protective benefits for the effected employes to alleviate the deprivation caused by the abbreviated protective period not envisioned by the New York Dock decision, or the March 15, 1981 Memorandum Agreement for the hereinafter named clerks.

J.Y. Powell
S.W. Hayes
S. Cutchins
S.A. Shipley
P.Y. Mason
P.S. Harris
Y.A. Yrizarry
G.D. Descheemaeker
D.S. Jackson
R.Y. Spruill"

OPINION OF BOARD: The relevant facts of this claim are not in dispute. Claimants are 12 employees effected by the coordination of clerical functions performed at Portsmouth, Newport News, and Richmond, Virginia. Pursuant to the Memorandum Agreement, effective March 15, 1981, covering the coordination of the Seaboard Cost Line and the Chesapeake and Ohio Railway Company clerical functions, Claimant elected the protective provisions of the New York Dock Labor Conditions, Finance Docket No. 28250.

Claimants each had less than 12 months of service with Carrier on the effective date of the coordination, March 15, 1981. On August 5, 1981, the Organization filed the instant claim alleging that Claimants' protective benefits had been erroneously calculated. Carrier timely denied the claim. Thereafter, the claim was handled in the usual manner on the property. It is now before this Board for adjudication.

The Organization urges that Carrier's construction of Section 5(a) of the New York Dock Agreement is erroneous as applied to the Claimants. It contends that Carrier erred in calculating the test period monthly average on the basis of 12 months for those employes, who had less than 12 months of service. In the Organization's view, this mode of calculation artificially lowered Claimants' displacement allowance to an amount well below the actual earnings for those months in which service was performed.

The Organization urges that the language of Section 5(a) clearly refers to the "average...monthly compensation" as the basis for the displacement allowance. According to the Organizations, Carrier should have calculated Claimants' test period monthly average by adding the monthly compensation for each month in which service was performed and dividing by the actual number of months of service, rather than by 12. The Organization urges that Carrier's construction is inequitable and against the clear meaning of the language. Accordingly, for these reasons, the Organization asks that the claim be sustained.

Carrier, on the other hand, maintains that it properly calculated the displacement allowance of all effected employes within Section 5(a). Carrier notes that the Agreement provides for the employe's displacement allowance to be "determined by dividing separately by 12 the total compensation...during the last 12 months." Carrier contends that the language of this provision is clear and that this Board lacks the authority to alter this plain meaning in order to remedy a subsequent claim of inequity. Accordingly, Carrier asks that the claim be denied.

After careful review of the record evidence, We are convinced that the claim must be denied. This is true for a number of reasons.

First, Section 5 of the New York Dock protective conditions clearly provides that an employe displacement allowance "shall be determined by dividing separately by 12 the total compensation received by the employe...during the last 12 months...preceding the date of his displacement." The language of this Section supports Carrier's view. It is evident that Claimants' protective benefits were properly calculated on the basis of the 12 months preceding the displacement.

Second, We recognize that the Organization has advanced a strong equitable argument. However, the language of Section 5 is clear. It makes no exception for those employees with less

than 12 months of service at the effective date of the coordination. While this result may be harsh, it is not within our province to alter the meaning of Agreement language in order to achieve a result unintended by the parties. (See, Third Division, Award Nos. 23884 and 22310). Accordingly, and for the foregoing reasons, the claim must be denied.

FINDINGS: The Public Law Board No. 3540 upon the whole record and all of the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act as approved June 21, 1934;

That the Public Law Board No. 3540 has the jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

AWARD:

Claim denied.

R.A. Scardelletti, Employe Member

Richard P. Byers, Carrier Member

Martin F. Scheinman, Neutral Member

7/24/90