

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES) Brotherhood of Railway, Airline and Steamship Clerks,
TO) Freight Handlers, Express and Station Employees
DISPUTE) and
Roy V. Thompson, former employee of the Canadian
National Railways

QUESTION

AT ISSUE: Is Roy Thompson, the undersigned herein, entitled to twelve (12) months separation pay as provided for in the Mediation Agreement and the Agreement of May 1936, the so-called Washington Agreement.

OPINION

OF BOARD: The Claimant herein was regularly assigned as a clerk at Fort Covington, New York, with a seniority date commencing October 6, 1941. Hence, he was a protected employee pursuant to Article I, Section 1, of the February 7, 1965 National Agreement. Thereafter, effective March 29, 1970, Claimant's position was abolished.

In the event a position is abolished, the effective Schedule Agreement provides certain options to the affected employee--exercise seniority rights to displace a junior employee within seven days, or accept furlough. Upon failure of the Claimant to exercise his displacement rights to a number of available positions in his seniority district, the Carrier placed him on the furloughed list.

In addition, the Carrier contends that Claimant forfeited his protected status pursuant to Article II, Section 1, of the National Agreement, due to his failure to obtain a position available to him in the exercise of his seniority rights. Further involved herein is an assertion of a compromise offer by the Carrier for Claimant to relinquish his rights as a protected employee. In this regard, there is a disputed question as to whether the compromise offer was conditioned upon a release of a personal injury claim sustained by Claimant.

It should further be noted that both the Carrier and the Organization advised Claimant to protect his interests by exercising his displacement rights. Instead, he filed a claim through his attorney with the Area Manager, pursuant to Article V, of the National Agreement, of his election to take a separation allowance.

Two defenses were interposed by the Carrier to the instant claim -- one on procedural grounds and the second on the merits. Inasmuch as the question of jurisdiction of our Board has been raised, we shall initially proceed to that question.


The instant claim was properly submitted at the first step of the grievance procedure with the Area Manager. At no time, thereafter, was the claim appealed to the highest designated officer on the property, as required by the Schedule Agreement. It is, therefore, our considered opinion that the claim must be dismissed on jurisdictional grounds.

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Despite the fact that the instant claim requires dismissal on jurisdictional grounds we have, furthermore, carefully reviewed the merits of this dispute. On the basis of our analysis on the merits, it is our considered opinion that the claim is defective and it should be denied. Thus in conclusion we would dismiss the claim on the procedural defect and deny it on the merits.

AWARD

The answer to the Question is in the negative.


Murray M. Rohman
Neutral Member

Dated: Washington, D. C.
June 9, 1971

