

PUBLIC LAW BOARD NO. 1682

AWARD NO. 13

CASE No. 8

March 31, 1977

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES

vs.

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM:

Claim filed for and in behalf of Mr. E. W. Yountz, former Agent-Operator, Albemarle, North Carolina, for interest at eight (8) per cent per annum compounded monthly from January 13, 1975, on the lump sum separation allowance due him, as requested in his letter dated January 13, 1975.

FINDINGS: This Board upon the whole record and all the evidence finds that:

The carrier and the employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act, as amended.

This Board has jurisdiction over the dispute involved herein.

OPINION: This case which requests an allowance of interest, is the companion case to Case No. 7, wherein the claim was for a lump sum separation allowance under the parties' April 1, 1971 Master Implementing Agreement covering Mobile Agency Routes. The lump sum separation claim was sustained for the reasons stated in Award No. 12 which disposes of Case No. 7, and the claim for interest is

allowed in the herein case.

Absent an express provision in the Agreement to the contrary, this majority opinion of Third Division Awards appears to be that interest should not normally be permitted in cases involving money claims which arise from differing interpretations of Agreement provisions relating to wages and working conditions. The issue in such cases is essentially whether the Agreement gives the Carrier the authority to engage in whatever is the complained of conduct, and the award in such cases is a resolution of this issue. While a sustaining award usually includes a money allowance, the award itself must be considered as being in the nature of unliquidated damages which are assessed in order to restrain and discourage the Carrier from continued repetition of similar actions that are violative of the parties' working agreement. Interest on such an award is not appropriate.

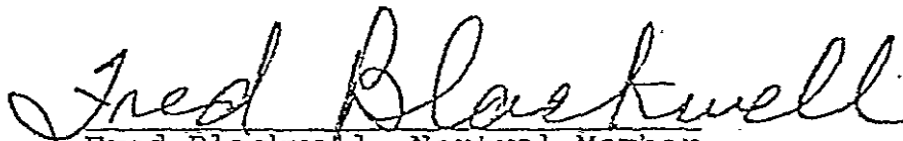
The nature of the issue in the herein case and in Case No. 7 is different, however. There is a fixed, easily defined lump sum of money, the Claimant's requested separation pay, at issue. This lump sum can be characterized as being in the nature of liquidated damages since, depending upon which party prevails on the merits, the Claimant is either entitled to the lump sum in its entirety or to no sum at all. In other words, although the underlying liability of the Carrier is in doubt at the commencement of the dispute, there is no question concerning the amount of money involved.

In cases centering around claims for such liquidated damage type lump sums it is appropriate to award interest as is indicated by the ruling found in Third Division Award No. 4665 (BRC-PRR).

(December 21, 1949). While the issue in that case was more clear cut than the issue in the herein case, it provides a helpful illustration of the principles upon which the allowance of interest in this case are based.^{1/} The only issue in Case No. 7 and the herein case is whether the Carrier is liable to the Claimant for a lump sum separation allowance. As the Carrier's affirmative defense failed to establish that the Claimant's employment history relieved the Carrier of its liability, this Board awarded the Claimant a lump sum separation allowance in Case No. 7. Having made such an award in that case, the Board finds that this case is essentially a part of Case No. 7 and that it is therefore appropriate to grant the request for interest at eight (8) percent per annum.

AWARD: Claim sustained for interest as requested in the Statement of Claim.

The Carrier shall comply with this Award within thirty (30) days from the date hereof.


Fred Blackwell, Neutral Member


J. W. Staley, Carrier Member


S. G. Bishop, Employee Member

Dated at Washington, D.C. this 31st day of March 1977.

^{1/} The case involved three claimants, ticket clerks, whom the Carrier had required to pay for alleged shortages of tickets and/or cash. The award was the return of all monies to the Claimants plus an allowance of interest.