Award No. 27
Case No. 56

PUBLIC LAW BOARD NO. 1946

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

and

Southern Pacific Transportation Company, Texas and Louisiana Lines

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) Carrier violated the Rules of the current Agreement between the parties, including but not limited to Addendum No. 1, Article II, Section 12(d), when at the close of business on December 7, 1976, it abolished Timekeeper Position No. 066 occupied by B. S. Anderson, Houston, Texas, when it did not have sufficient credits to abolish that position.

(2) Carrier shall be required to re-establish Timekeeper Position No. 066 and restore Claimant to that Position.

(3) Carrier shall be required to compensate and reimburse B. S. Anderson for any loss in earnings and expenses for each and every day commencing December 8, 1976 and continuing thereafter so long as Timekeeper Position No. 066 is abolished and B. S. Anderson is held off of this position.

(4) Carrier shall be required to reimburse and compensate all other employes adversely affected as a result of this violative action for all losses in earnings and expenses incurred.

(5) Carrier shall restore B. S. Anderson to its service with seniority, vacation, and other employe rights unimpaired.

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(4) Carrier shall be required to reimburse and compensate all other employes adversely affected as a result of this violative action for all losses in earnings and expenses incurred.

(5) Carrier shall restore B. S. Anderson to its service with seniority, vacation, and other employe rights unimpaired.

The real basic issue is whether or not an employe who accepts severance pay pursuant to the provisions of Article IV of the TOPS Agreement has "resigned" within the meaning and intent of Section 12(c) of Article II of that Agreement. The determination of that question is relevant to a calculation of attrition credits used to abolish positions.

Employes state their position in a letter addressed to the Carrier and dated January 5, 1978. It is as follows:

> ...if the occupant of the position to be transferred decides to take severance pay, ... the act of accepting severance pay does not give the Carrier another attrition credit. Yet during the year 1976 some 27 employes accepted severance pay and Carrier has claimed an additional credit in each case. This was not the intent nor past practice and understanding on the property.

Clearly, the document executed by the Claimant on December 7, 1976, and by others in a similar position, specifically says that she "resigns" from her employment with the Carrier. There can be no mistake about the meaning and intent of the word "resign". By executing this document, she severed all employment relationship with the Carrier. She was not compelled or coerced to do so.

Acceptance of severance pay terminates an employment relationship. The common and ordinary meaning of "severance" is to end, to break away, to forever disengage. It would be incongruous if an employe who accepts severance pay could retain the sum he or she received and still claim seniority and job rights. And the applicable provisions of the TOPS Agreement does not allow such an employe to return the severance pay he received and ask for reinstatement with all seniority and other contractual rights unimpaired.

Upon this record, the Board finds that the Carrier did not violate the Agreement, that B. S. Anderson, having exercised her option and having resigned from her position, is not a proper claimant,

that, in any event, Carrier has the right to include for attrition determination those employes who resign to accept severance pay.

AWARD

Claim denied.

PUBLIC LAW BOARD NO. 1946

DAVID DOLNICK, Chairman and Neutral Member

H. A. SHIVER, Carrier Member

R. O. NORTON, Employe Member - Dissenting

DATED: March 2, 1959

EMPLOYEE MEMBER'S DISSENT

TO AWARDS 27 AND 28

PUBLIC LAW BOARD NO, 1946

It was not the intent of the Rule, nor was it ever applied in this fashion until 1976, six years after "TOPS" (September 16, 1971) that Carrier could abolish in excess of 8% of the base number of positions in any calendar year. However, in the year 1976, Carrier abolished 38 positions, four more than what was permitted under the 8% limitation applied to the 429 existing permanent positions, The Board never extended the scope of its jurisdiction to that issue, although this was the issue, and the decision should have been based upon that issue, not that as stated by the Majority:

> "The real basic issue is whether or not an employe who accepts severance pay pursuant to the provisions of Article IV of the TOPS Agreement has "resigned' within the meaning and intent of Section 12(c) of Article II of that Agrement. The determination of that question is relevant to a calculation of attrition credits used to abolish positions," (Page 3, first paragraph of Award 27)

The "real issue" was framed on the property at the outset when Division Chairman Graeter set it forth in his initial claim thusly:

> "At the beginning of the year 1976, there were 429 permanent positions on Seniority District No. 1 of the Southern Pacific Transportation Company-Texas and Louisiana Lines, Under the Agreement signed September 16, 1971, Addendum No. 1 known as the TOPS Ageement, Carrier had the right to abolish 8 percent of the permanent positions in the year 1976, that being a total of 34 permanent positions on Seniority District No, 1 on the Texas and Louisiana Lines of the Southern Pacific Transportation Company. Carrier exceeded that 8 percent when Position No. 066 was abolished at the close of business on December 7, 1976."

Petitioner stated at Page 3, first paragraph of its submission:

> "Both parties agreed in conference on November 18, 1977, that the question to be submitted to your Honorable Board in this case was , . . 'Does the 8% limitation apply when reducing positions in excess of the number required in the application of paragraphs (a) and (d) of Section 12 in Article II of the TOPS Agreement...' ".

The answer propounded by the Majority begs the "real issue". Thus, the question as propounded was never answered, Moreover, Section 12(c) , Article II, TOPS Agreement states:

> "One attrition credit shall be allowed for each employe who vacates a permanent assignment by reason of,,,"

No assignment was vacated; Carrier abolished Position 066, after which the incumbent thereof elected to take separation pay. Hence, the Carrier put the cart before the horse

in its endeavor to improperly secure an attrition credit. The act of separation came after the act of abolishment. We ask the question: How can one vacate a position that does not exist?

The Majority erred grievously in its decision; therefore, we can not accept this Award as being a valid and binding interpretation of the Agreement, hence our dissent.

R. O. Norton
Employee Member
Public Law Board No. 1946

March 9, 1979