

Award No. 219
Case No. TCU-23-W

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES) Chicago, Burlington & Quincy Railroad Company
TO THE) and
DISPUTE } Transportation-Communication Employees Union

QUESTIONS AT ISSUE: 1. Did Carrier violate the Agreement, particularly Article V, when it refused to pay D. E. Parish a lump sum separation allowance (in lieu of all other benefits and protections provided in the Protective Agreement and Washington Agreement) when the agencies at Hale and Sumner, Missouri, were consolidated March 5, 1966?

2. Shall Carrier be required to allow D. E. Parish a lump sum separation allowance computed in accordance with the schedule set forth in Section 9 of the Washington Job Protection Agreement?

OPINION OF BOARD: On January 11, 1966, the parties entered into an implementing agreement which provided for the consolidation of agency positions at Hale and Sumner, Missouri. The senior employee at the two stations was given preference in selecting the dualized job. The agreement added that if he did not want it, then it was to be available to the junior man. If the junior man also declined it, it would be bulletined as a new position.

Section 6 of the implementing agreement provided:

Any protected employe transferring to a new point of employment as a result of the operational and organizational changes made herein, therefore requiring a move of residence, will be entitled to the benefits provided for in Article V of the Agreement made on February 7, 1965, and interpretations thereto dated November 24, 1965.

The dualization was effective March 7, 1966. Claimant, a protected employee, by letter on February 26, 1966, advised Carrier that he elected to resign "in lieu of transferring." He requested payment of the separation allowance set forth in the Washington Agreement. His letter stated, in part:

Please be advised that I elect to resign on the effective date of the dualization in lieu of transferring, and respectfully request a lump sum separation allowance computed in accordance with the schedule set forth in Section 9 of the Washington Agreement.

Article V of the February 7, 1965, Agreement provides a lump-sum separation allowance in accordance with the Washington Agreement when employees are requested to transfer, pursuant to an implementing agreement, and it necessitates a change in residence. There is no question that this implementing agreement grants Claimant the Article V benefits, if he transfers to a point requiring a change of residence. However, Carrier contends that Claimant did not transfer to any new point of employment at all, nor was he requested to make such a transfer. Carrier said it had no reason to make the request since he had primary rights to the dualized position. Carrier contends that Claimant has no contractual support for the separation allowance "if he elects neither to take the dual agency or transfer to some other station."

According to the Organization, since Claimant had a seniority date of 1905 he could have selected virtually any position for which he was qualified. It is perfectly clear that Claimant properly exercised his option to decline the dualized position. But it is also plain that he neither transferred, nor was he requested to transfer, to a point of employment requiring a change of residence.

Neither the implementing agreement nor the February 7 Agreement provides for a separation allowance simply because an employee exercises a right to decline a position. There is nothing in the record which indicates what transfer

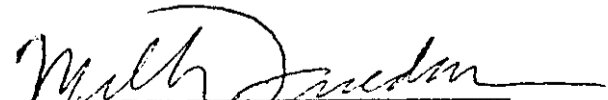
Award No. 219
Case No. TCU-23-W

or transfers were available to Claimant and whether a change of residence would have been involved had he made a transfer. Thus what is sought here is the transformation of Section 6 of the implementing agreement and Article V of the February 7 Agreement into superfluities, as they would be if the separation allowance were to be made payable merely upon resignation.

If Claimant, in accordance with the implementing agreement, had been required to transfer to another position and if it required a change of residence, he would have been entitled to the separation allowance. However, a claim cannot be based upon the subjunctive. It must rest upon established facts and must meet contractual prerequisites. This claim does not.

A W A R D

The answer to the Questions is No.


Milton Friedman
Neutral Member

Washington, D. C.
November 16, 1970

copy to J. J. C. 12/1/70