

AWARD NO. 282
Case No. TCU-91-W

PARTIES) Burlington Northern, Inc. (Formerly Northern Pacific
TO THE) Railway Company)
DISPUTE) and
Mrs. LuVerna M. Lee (Formerly Mrs. LuVerna M. Murphy)

QUESTION
AT ISSUE:

Mrs. Lee was employed by the Northern Pacific Railway Company as a telegraph operator, relay division, for approximately twelve (12) years. Mrs. Lee claims that her job as operator in the Missoula relay office was abolished in view of the prospective coordination (merger) of her employer-carrier and other carriers. Mrs. Lee claims that she is entitled to twelve (12) months' separation allowance in accordance with Article VI of the Mediation Agreement of February 7, 1965, in accordance with Sections 7, 9 and 12 of the Washington Agreement of May, 1936, and in accordance with the Job Protection Agreement of January 18, 1968.

OPINION

OF BOARD: This claim was submitted to the Disputes Committee directly by the employee through her attorney. Originally Claimant's attorney requested an opportunity to file a rebuttal to Carrier's answering submission. The request was granted by the Disputes Committee ("without establishing a precedent"), although the procedures do not contemplate the filing of such responses. However, by letter dated October 19, 1971, Claimant's attorney, Robert F. Adams, Jr., advised the Committee that a rebuttal brief would not be filed and that Claimant "will rest her case upon her submission and the attachments thereto."

The issue was thereupon submitted on the voluminous record, in which a key element is Exhibit No. 13 of Carrier's submission. This is a letter agreement executed on November 13,

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1968, by Carrier and the Organization. It cites a settlement discussion of November 12, 1968, in which Claimant, in consideration of the restoration of her seniority, agreed that she had forfeited her protected status and also agreed to drop "any and all action under the February 7, 1965 Agreement," as well as any court action "resulting from the incidents in the early part of 1968." This was the period in which Claimant had alleged a violation of the February 7 Agreement in Carrier's refusal to grant her a separation allowance.

According to Carrier's unrefuted submission, Claimant was present at the November 12 discussion, "was fully informed of her circumstances, was capably represented by the two top officers of the Union on the Northern Pacific System, and was made aware of the Carrier's position in the matter by its officers there present. Mrs. Lee then and there agreed to abandon any further claims or requests for severance allowance if her seniority were restored..."

The agreement restoring Claimant's seniority in 1968, upon her waiver of a claim like that filed here, was reached with her consent. Since Claimant and both parties had reached such an understanding, which was embodied in a written document executed by Carrier and by her collective-bargaining representative, Claimant is now estopped from reinstituting her claim.

A W A R D

The claim is denied.


Milton Friedman
Neutral Member

Dated: Washington, D. C.
January 27, 1972