

The First Division consisted of the regular members and in addition Referee David P. Twomey when award was rendered.

(CSX Transportation, Inc.
(former Baltimore & Ohio Railroad Company
PARTIES TO DISPUTE: (
(United Transportation Union

STATEMENT OF CLAIM:

"Did the obtaining of a release of an employee's seniority and employment rights, including claims, when the employee received a voluntary severance payment from CSXT pursuant to the Crew Consist Agreement of 1989 between CSXT and the United Transportation Union (former B&O and B&OCT) violate said agreement and the past practice thereunder?"

FINDINGS:

The First Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

On May 24, 1982, a Crew Consist Agreement was reached with the Organization on all the former properties which comprised the Chessie System, including the former B&O and B&OCT Railroads. The Agreement provided for reduction of crew size on certain trains to a conductor and one trainman on a pure attrition basis and for the employees to share in the savings through special allowances and productivity fund payments. Included in this 1982 Agreement as Article 19 is a provision which permits the Carrier to make agreements with individual protected employees for voluntarily early separations from service. Article 19 states:

"ARTICLE 19

To expedite attrition, an individual protected employee may request or may be offered by the Carrier in seniority order opportunity for voluntary early separation and accept a lump sum separation allowance and other considerations in lieu of all other benefits and protection provided in this Agreement. Such employee will be given an opportunity to elect hospital-surgical coverage for himself and his dependents in lieu of a portion or all of the severance allowance agreed upon, if he so desires.

Such request or offer for early voluntary separation will be in writing and subject to the approval and option of both the individual employee and Carrier's Director Labor Relations."

There can be no doubt as to the Carrier's right to make agreements with individual protected employees for voluntary early separation under Article 19. Indeed, the International President of the Organization in a letter of instruction to the Vice President of the UTU on May 8, 1986, concerning his assignment to revise the Chessie System Crew Consist Agreement expressed the fundamentally sound position that Agreements for severance pay are best left to the Carrier and individual involved as apparently contemplated by Article 19 of the Crew Consist Agreement. The President's letter, with copies to the General Chairmen of the Chessie System properties including the present General Chairman of the former B&O property, stated:

"May 8, 1986

Mr. H. D. Masters, Vice President
United Transportation Union
. . .
Newark, Ohio 43055

Dear Sir and Brother:

This will acknowledge your letter dated April 24, 1986, concerning your current assignment to revise the Chessie System Crew Consist Agreement and the Carrier's proposed buy-out of employees as provided for in Article 19 thereof.

It has always been the position of this office that the matter of separation allowance, which may be offered to employees, be a matter solely left to the prerogative of the Carrier. We have never encouraged any employee to accept an offer of severance pay, however, we can not stop anyone from taking advantage of such an offer.

In view of the above, it would be in the best interest of the UTU if we were to not become involved in making agreements providing for severance pay. Rather, this is a matter best left to the Carrier and individuals involved as apparently contemplated by Article 19 of the Agreement.

Trusting this information will be of help, I remain

Fraternally yours,

s/ Fred A. Hardin
President

cc: Mr. C. L. Little, Vice President
Mr. H. A. Cobb, GC, GCA-CSX Corp. (C&P Ry. P)
Mr. D. D. Lewis, GC, GCA-CSX Corp. (C&O Ry. N)
Mr. R. W. Earley, GC, GCA-CSX Corp. (B&O RR)
Mr. R. J. Will, GC, GCA-CSX Corp. (WM Ry.)"

On November 18, 1988, an Agreement was reached on the former L&N with the Organization, modifying the provisions of the Crew Consist Agreement. On December 6, 1988 an Agreement was reached on the former C&O HV and PM seniority districts modifying their 1982 Crew Consist Agreement. On both these properties employees who took voluntary separations executed releases in which they terminated their seniority and released the Carrier from any and all employment-related claims, including any pending time claims. In early 1989, the Carrier commenced discussions with the B&O General Committee also looking to reach a modification of their 1982 Crew Consist Agreement. Agreement was reached with the B&O/UTU on May 16, 1989 which Agreement was a modification of the 1982 Crew Consist Agreement on the B&O.

The Carrier solicited among its employees for voluntary separations during the appropriate time period. It distributed a packet of materials to all employees, including the Summary Plan Description which made it clear beyond any possible doubt that employees accepting the Carrier's offer would have to release the Carrier from any and all rights and claims. The release forms were identical to release forms used on the former L&N and C&O-HV/PM Properties in conjunction with their separation programs under their modifications of the 1982 Crew Consist Agreements. After the B&O/UTU Agreement was ratified, some 619 applications were accepted by the Carrier under the May 16, 1989 Agreement. Each individual involved completed and duly executed a release form. And the Carrier paid some \$25,000,000. in severance pay to these individuals. After the payments were made, the Organization challenged the provision in the release that contained waiver of penalty and other claims not connected with the termination of seniority and employment relationship

or protective rights under the revised Crew Consist Agreement; the General Chairman stating that he was first made aware of the provisions of the release in the latter part of June 1989. The Organization requests this Board to rule that any releases obtained by the Carrier to the extent they purport to waive all pending grievances are not enforceable and are in violation of the Crew Consist Agreement.

The Organization neither sought nor obtained any restriction on the right of the Carrier to take releases or limit the content of such releases in connection with the 1989 Crew Consist Agreement. No evidence exists in the record before us that the Organization previously sought to bargain about the contents of releases under Article 19 of the 1982 Agreement. We find that Article 19 gives the Carrier the right to negotiate with individual employees about voluntary early separation. The Agreements are between the Carrier and the individuals. As the International President expressed in his May 8, 1986 letter, such is a matter best left to the Carrier and the individual as apparently contemplated by Article 19.

In order to make an application for severance payment each employee had to have a copy of the Separation Program. Attachment A to the Voluntary Separation Program is the Summary Plan Description, one section of which stated:

"HOW DOES MY ELECTION TO RECEIVE BENEFITS
AFFECT MY EMPLOYMENT RIGHTS?"

By accepting your election as provided in the Plan, the Company agrees to pay you a benefit and you agree to give up all your employment rights against the Company. You do this by resigning from employment and signing an agreement by which you relinquish your seniority rights and any other employment-related claims which you may have against the Company. This means, for example, that (1) you no longer will have any right to be employed by the Company, and if for any reason you are reemployed, you will have no seniority rights; (2) you cannot assert or continue to assert a claim or institute a legal proceeding of any nature against the Company based on your relationship as an employee, such as a claim that the Company has violated a contractual right or discriminated against you in some manner on the basis of age, sex, race, national origin, religion, handicap, or that you have been wrongfully discharged; and (3) you will give up your right to claim any employment benefits you might otherwise have under labor protective conditions imposed in railroad transactions by the Interstate Commerce

Commission or under any job protection agreement in effect between the Company and the union of which you are a member which covers your craft. The agreement you must sign will be a total and absolute release of any and all of your employment-related rights. Moreover, the agreement will be binding upon your heirs and personal representative. The examples set forth above are some of the rights you will relinquish, but there may be other rights that are not specified. If you have any questions about the legal implications of the release agreement, you are urged to consult your legal advisor."

Paragraph I of the notice of the Separation Program clearly stated that the employee would be required to "acknowledge that you are doing so voluntarily and to release the Company from any and all rights and claims." In making such acknowledgment through signing the release form, each accepting employee certified in part that:

"...I hereby release the Company . . . from any and all employment related claims of any nature, including but not limited to, those rights specified in the Summary Plan Description...."

I acknowledge that I have been provided and have carefully read the Summary Plan Description (in particular the description of employment rights being released as set forth in the section, 'How Does Election to Receive Benefits Affect My Employment Rights?') and this agreement, know their content and voluntarily sign this agreement, being fully aware of its final and binding effect on me and my heirs and personal representatives...."

The clear and explicit manner in which the Carrier made known to its employees the terms of its offer, and the clarity with which it communicated to employees concerning the rights they would be giving up by signing a release made certain that all 619 affected employees should reasonably have known that they were waiving their rights in regard to all pending time claims or grievances by accepting the Carrier's offer.

The UTU International President stated in part in his May 8, 1986 letter:

". . . It has always been the position of this office that the matter of separation allowance, which may be offered to employees be a matter solely left to the prerogative of the Carrier. We have never encouraged any employee to accept an offer of severance pay, however we cannot stop anyone from taking advantage of such an offer. . . ."

We agree with this position that individual employees had the right to take advantage of the Carrier's offer. And, we find that they had the right to relinquish claims filed by or on behalf of such individuals under the Schedule Agreement. Where the Organization neither sought nor obtained restrictions on the right of the Carrier to take releases, we are compelled to reject the Organization's position in this case.

ANSWER TO QUESTION:

The obtaining of a release of an employee's seniority and employment rights, including claims, when the employee received a voluntary severance payment from CSXT pursuant to the Crew Consist Agreement of 1989 between CSXT and the United Transportation Union (former B&O and B&OCT), did not violate said Agreement and the past practice thereunder.

A W A R D

Claim disposed of in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of First Division

Attest:


Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 19th day of August 1992.