

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 20368
Docket Number SG-20072

David P. **Twomey**, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Southern Pacific Transportation Company (Pacific Lines)

STATEMENT OF CLAIM: Claim of the General **Committee** of the Brotherhood of Railroad Signalman on the Southern Pacific Transportation Company that:

(a) The Southern Pacific Transportation Company violated **NMB** Case A-8811 and A-8811 Sub **1**, by failing and/or refusing to allow Mr. R. R. **Dunivan** the retroactive pay provided by the Joint Resolution for all **time** worked for Carrier from January 1, 1970 to May 31, 1971.

(b) Mr. R. R. **Dunivan** promptly be allowed the retroactive pay provided by Joint Resolution S. J. L00 for all time worked for Southern Pacific Transportation Company during period January 1, 1970 through May 31, 1971.

Carrier's File: SIG 188-22-17

OPINION OF BOARD: The Claimant alleges that he was improperly denied retroactive pay for the period of January **1**, 1970 to Nov. 23, 1970 in violation of **NMB** Case A-8811 and A-8811 Sub 1 and the Joint Resolution of Congress of May 18, 1971. The Claimant contends that there are no exceptions as **to who** should receive the retroactive pay in the Joint-Resolution which could serve to exclude him **from** receiving such back pay, even though he voluntarily resigned from service on **November 23**, 1970 and returned to work with **Carrier** on January 17, 1971.

In order for **Claimant** to prevail before this Board, he must show an Agreement violation. The pertinent **agreement, Mediation** Agreement, Article I, Sec. 9(c)-(4), provides:

"(4) All employees who had an employment relationship after December 31, 1969 shall receive the **amounts** to which they are entitled under Article I regardless of whether they are now in the **employ** of the **carrier except persons who prior to the date of this Agreement have voluntarily left the service of the Carrier** other than to retire or who have failed to respond to a call-back to service to which **they** were obligated to respond under the **rules** agreement." (emphasis supplied).

Under the clear terms of the above quoted provision, Claimant who voluntarily left the service of the Carrier on November 23, 1970, is not entitled under the Agreement to the retroactive pay in dispute.

Claimant's case before us rests on the contention that the Joint Resolution of Congress gave him rights distinct from the above discussed Agreement rights; and this claim is before us seeking enforcement of these legislatively created rights.

It is unquestionably settled that this Board is not empowered to interpret the laws of Congress. This Board has no discretion in this matter nor may we advise parties as to optional courses to pursue. The Claimant shall not be **prejudiced** by this decision.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the **Employees involved** in this dispute are respectively Carrier and **Employees** within the meaning of the **Railway** Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That claim is denied without prejudice.

A W A R D

Claim denied without prejudice.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *A. W. Paulos*
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of August 1974.