Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 29134
THIRD DIVISION Docket No. CL-29384
92-3-90-3-313

The Third Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

PARTIES TO DISPUTE: (Allied Services Division
(Transportation Communications International Union
(
(Western Railroad Association

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood (GL-10465) that:

1. The Western Railroad Traffic Association arbitrarily violated Rules 2, 4, 5, 8 and 28, among others of the agreement, when it failed to award G. A. Mitros an Analyst position on March 16, 1984, but instead, assigned the position to Mr. D. Finkes who did not bid.

2. The Association shall now be required to award this Analyst position to Mr. G. A. Mitros and to compensate him at the daily rate of an Analyst position for each and every day, beginning March 16, 1984, and continuing until this dispute is resolved."

FINDINGS:

The Third 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 waived right of appearance at hearing thereon.

During March 1984, the Western Railroad Association ("Association") reorganized four Regional Tariff Bureaus and its Tariff Computer Conversion Department into two divisions. As a result, a significant number of Assistant Analyst and Analyst positions were bulletined. The initial dispute arose because the Claimant was not awarded one of the Analyst's positions. The Record shows a long and protracted disagreement between the parties with respect to the merit of the Claim. The contentions and counter-contentions mainly focused on, among other things, whether the Claimant was a proper one, whether he was qualified, whether he was entitled to an Unjust Treatment Hearing, etc.

After considering the record, we conclude that the Organization has made its case basically for the reason set forth in its letter of January 22, 1985, to the Carrier.

This finding not withstanding, the threshold question before the Board is the effect on this Claim of a voluntary resignation executed by the Claimant, effective May 15, 1985. The Board has carefully reviewed the Awards relied upon by both parties and finds the Association's position persuasive.

The Claimant signed a Voluntary Option Form as well as a Voluntary Separation Plan Release which, in pertinent part stated:

> "In consideration of $24,012.00, I hereby resign effective with the close of business, May 15, 1985, and voluntarily waive and relinquish any and all rights, claims, causes of action of any kind *** to which I am entitled by contract *** arising out of my employment by the Western Railroad Traffic Association and affiliated Rate Bureaus, which I have or might have against the Western Railroad Traffic Association and affiliated Rate Bureaus, their agents, employees or their member railroads.
>
> In consideration of the above $24,012.00, and in lieu of any other benefits to which I might have been entitled, I am voluntarily resigning and executing this release. No promises of inducements, other than those set forth in this release have been made to me to secure my signature on this document."

There is nothing in the record to show that the employee's resignation was anything other than a voluntary action. By so doing, he extinguished a right that he had and it is clear, in view of the language noted above, that he relinquished his Claim. Therefore, the Association is released from all financial obligations because of the release signed by the Claimant.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1992.

LABOR MEMBER'S DISSENT TO

AWARD 29134, DOCKET CL-29384

(REFEREE MUESSIG)

A Dissent is required in the case at bar because the Majority Opinion has erred and issued a decision which is unreasonable based upon the facts set forth and prior decisions on the very same property.

To begin with the Majority correctly ascertained that the Carrier had violated the Agreement by stating:

> **"After considering the record, we conclude that the Organization has made its case basically for the reason set forth in its letter of January 22, 1985, to the Carrier."**

After concluding the aforementioned the Majority then incorrectly turned around and determined the following:

> **"There is nothing in the record to show that the employee's resignation was anything other than a voluntary action. By so doing, he extinguished a right that he had and it is clear, in view of the language noted above, that he relinquished his Claim. Therefore, the Association is released from all financial obligations because of the release signed by the Claimant."**

It is interesting to note that the Majority Opinion is silent with respect to Award No. 2 and No. 5 of Public Law Board 3841. They have simply decided that if you ignore property precedence which was presented to them it will disappear. Both Awards dealt with Voluntary Resignations and stated exactly the opposite of this Award. Those Awards established the precedence and should have been followed in this instance. This Board as an ongoing principle has continually stated in it's Awards that it will not overthrow

precedential Awards unless they are shown to be palpably erroneous.

The Majority has not shown that Award No. 2 or No. 5 are palpably wrong and in fact they do not even attempt to distinguish a difference between those two Awards and the subject Award. The reason they do not attempt to show a difference is because they cannot.

In the case at bar the Majority should have heeded the language of Award no. 5 which stated the following:

> **"The precedent set in Award No. 2 of this Board does apply to the instant case. In both cases, the contract was violated prior to the resignation of the employe in question: in Case No. 2 because of self-executing provisions of contract; in this case because the company admitted of the violation and arrived at a settlement with the Organization. Absent any other information of record, the Board must conclude that the proper relief is that which was requested by the Organization...(Underlining our emphasis)**

It stands unrefuted that the Majority recognized the contract was violated prior to the resignation of the Claimant. The next logical conclusion would have been to sustain the claim on the same basis as Award No. 2 & 5 of P.L.B. 3841, but because that was not done the Majority has incorrectly written an Award which is palpably erroneous. The Majority should have adhered to the principle of "Stare Decisis" which simply means Boards will stand by decisions and not disturb settled matters.

For the foregoing reasons Award 29134 carries no precedential value and requires strenuous dissent.

William R. Miller
Labor Member N.R.A.b.

Date March 6, 1992

CORRECTED
ES Office

CARRIER MEMBERS' RESPONSE
TO
LABOR MEMBER'S DISSENT
TO
AWARD 29134, DOCKET CL-29384
(Referee Muessig)

The matter resolved in Award 29134 was one of a number of identical disputes that arose in March of 1984. Award Nos. 3 and 4 of PLB 3841, between the parties here, rendered in 1987 and 1989, concluded that the Carrier's action in 1984 was in violation of the contract. Award 29134, at the top of page 2, concurs in that disposition.

However, Claimant executed a resignation for consideration, effective May 15, 1985. An individual always has the right to dispose of his own claim and such right, properly exercised, cannot be abridged. See in this regard, Third Division Awards 22645, 22932, 24869, 25887, 26345 and 27043 just to cite a few.

Award 2 of PLB 3841 concurred in the foregoing when it stated:

> "...that individuals under union contract may resign their positions without the concurrence of the labor organization...and that when an employee signs a waiver, upon resigning, that such employee '...waiv(es) all rights to any claims...'" (Emphasis added)

However, in Award Nos. 2 and 5 of PLB 3841, raised by Dissentor, that Board enunciated other grounds, essentially perceived equitable considerations, to distinguish the disposition in those cases from the general rule, quoted above. In Award 2 it was concluded that there had been a preexisting contract violation and such was not extinguished by the "all claims" language of the resignation. How "all claims" did not mean all claims was not discussed. In Award 5, a settlement, unknown to the Claimant, had

been agreed upon with the Organization, just two weeks prior to the Claimant's executing his resignation. That PLB 3841 ignored the fact that individuals have a right to dispose of their claims and that the documents executed by individuals should be read to mean exactly what they say, does not establish that PLB 3841, Award Nos. 2 and 5, are precedent either on this property or in this industry. In fact, those decisions, by their language, establish that they were exceptions to the established precedent.

The contractual issue had been resolved long before this Organization submitted this claim to the Board on June 5, 1990. Claimant had concluded the matter as far as he was concerned in 1985. That Award 29134 concurred in the merits disposition already made and followed industry precedent is certainly reasonable and is something that should be followed, despite Dissentor's "sour grapes."

P. V. VARGA

M. W. FINGERHUT

R. L. HICKS

M. C. LESNIK

J. E. YOST