

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13660

Docket No. 13560

01-2-00-2-39

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

**(Brotherhood Railway Carmen Division
(Transportation Communications International Union
PARTIES TO DISPUTE: (
(Delaware and Hudson Railway Company, Inc.
((Division of CP Rail)**

STATEMENT OF CLAIM:

“Claim of the Committee of the Union that:

- 1. The Delaware and Hudson Railway Company violated the terms of our current agreement in particular Letter of Understanding No. 1 (Me-Too Clause) when they arbitrarily denied the Organization’s request to amend the agreement through application of this letter.**
- 2. That, accordingly, the Delaware and Hudson Railway Company be ordered to provide the level of benefits enjoyed by the TCU/Clerks and apply it to the TCU/Carmen’s Agreement, as set forth in Letter of Understanding No. 1 dated May 11, 1999, to be made effective January 1, 2000.”**

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

In connection with a Memorandum of Agreement setting revised contractual terms, the Carrier and the Organization ("TCU/Carmen") agreed to the following Letter of Understanding No. 1:

"In the event the D&H executes an agreement for the period commencing January 1, 2000 and ending December 31, 2001 with any other unions representing its employees that contains improvements in the areas of compensation and benefits that are greater than those set forth in this Memorandum of Agreement, it is agreed that such improvements will be incorporated into the D&H/BRC (Carmen) Agreement with the D&H, unless such improvement(s) was made in consideration for modification(s) in the Company's Agreement with the other Union which benefits the D&H."

Subsequently, the Carrier and the TCU/Clerks formulated a Memorandum of Agreement that included a Supplemental Sickness program. This Supplemental Sickness program is identical to that already included in the TCU/Carmen Agreement. The Organization (TCU/Carmen) notes, however, that the TCU/Clerks Agreement continues to include a provision for up to ten sick leave days, a benefit not previously or currently included in the TCU/Carmen Agreement. In addition, there is no evidence that the granting of the Supplemental Sickness program to the TCU/Clerks was in "consideration for modifications."

As a result, the Organization argues that Letter of Understanding No. 1 becomes applicable, stating as follows:

"The benefit of two (2) supplemental sickness benefit plans [provided for TCU/Clerks] should now be afforded to the TCU/Carmen. The ten (10) sick days that the TCU/Carmen do not currently have at this time should be incorporated into our agreement as an additional benefit."

The Board cannot find justification for this position in the "Me Too" Letter of Understanding No. 1. That document specifically refers to "benefits" provided any other Organization in current (2000-2001) negotiations that are "greater than those set forth in" the Memorandum of Agreement with the TCU/Carmen. The relevant

“benefits” negotiated with the TCU/Clerks is the Supplemental Sickness program. This, of course, is not “greater” than that already provided pursuant to the TCU/Carmen Agreement.

The Organization argues that this leaves the TCU/Clerks with two supplemental sickness plans, while the TCU/Carmen enjoy only one. Nothing in the “Me Too” Agreement, however, suggests that the remedy sought by the Organization is required of the Carrier. To repeat for emphasis, Letter of Understanding No. 1 is limited to matters currently negotiated and does not include an overall comparison of the terms of one Agreement with another.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 11th day of December, 2001.