

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Award **Number** 23266  
Docket number CL-23398

**Carlton R. Sickles, Referee**

**PARTIES TO DISPUTE:** { **Brotherhood of Railway, Airline and Steamship Clerks,**  
{ **Freight Handlers, Express and Station Employees**  
(**Houston Belt and Terminal Railway Company**)

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood  
(GL-9273) that:

1. Carrier violated the **National Agreement** dated January 13, 1979, between the parties when it **failed** and refused to properly apply the negotiated wage increases to the position of **Chief Claim Clerk**, occupied by Mrs. **Evelyn Hartman**.

2. Carrier **shall** now be **required** to properly apply all **national** wage increases to the position of **Chief Claim Clerk** as negotiated.

3. Carrier **shall** now be **required** to **compensate Claimant Hartman** for the difference in rate of **pay** allowed by **Carrier** and that to which entitled pursuant to the **National Agreement** dated January 13, 1979.

**OPINION OF BOARD:** Pursuant to an agreement dated April 4, 1973 between the District General **Chairman** and the President of the Carrier, the **claimant was granted** a \$1.50 **merit** increase effective April 1, 1973. The operative paragraph of this letter **provides as follows:**

"In above-mentioned conference, we agreed to a merit **increase** of \$1.50 per day effective April 1, 1973 which **will** apply to Mrs. **Hartman** only, and should she **vacate** this assignment of **Chief Claim Clerk**, the rate will **automatically** drop back to the original rate set up in the agreement plus any future general adjustments in the meantime."

The Agreement was on the letterhead of the Organization signed by the **District General Chairman**, and the last paragraph provided as follows:

"If the above **is** the **correct** understanding of our discussion, please advise by placing your signature **in** the space provided below, returning one copy for our file."

The signature of the **President of the Carrier** has been affixed to the letter. The question at issue is whether the \$1.50 per day **merit increase** is subject to further increase whenever there is an increase in the **rate of pay pursuant to the prevailing collective bargaining Agreement**. The claimant contends that the intent was to increase the rate of pay by \$1.50 and that any subsequent **adjustments** would affect the new **rate of pay including** the \$1.50. The Carrier contends that the \$1.50 is a **fixed** amount which is always paid in addition to the **rate of pay** which is **separately adjusted** as a result of wage increases.

There is some confusion in the pleadings because the Carrier indicates that for the **balance of the contract which was** in existence when **this** merit increase was awarded, that the \$1.50 fixed **amount was** not included in the rate of pay and, therefore, not subject to the subsequent **adjustments**. On the other hand, the claimant claims that the \$1.50 was **made a part** of the rate **structure** and thereafter all adjustments applied to the total rate including the **\$1.50**.

We have concluded that the **memorandum Agreement** does not change the **rate of pay** and on its face does not support the claimant's position that the **merit** increase was other than a stipulated **amount** to be added to the otherwise-negotiated **rate** of pay.

The **Organization** asserts that if the Intention was not to include the \$1.50 **figure** as a part of the rate of pay, then the Carrier should **have** added an appropriate clause to spell out this condition. **Inasmuch** as the document was prepared by the Organization, the **same argument** could be **made** that if the \$1.50 were to be made as an **integral** part and establish a new rate of **pay**, then appropriate language should have been included to **insure** that **subsequent adjustments would** affect the \$1.50 merit increase **as** well as the balance of the current **rate** of pay.

We have reviewed the memorandum of the claimant as to the **manner in which** her salary was handled in three subsequent pay adjustments **indicating** that the \$1.50 was, in **fact**, made a part of the rate and therefore increased in the subsequent adjustment. **This raises** the question as to whether a **clerical** mistake subsequently detected by an employee of the Carrier should forever bind the **Carrier** to an erroneous interpretation of an Agreement between the parties. There is no indication that this improper interpretation of the **Agreement** was **known** by the principals who negotiated the Agreement and **under the circumstances**, we do **not** agree that the clerical error should change the intent of the Agreement **and** bind the **Carrier**.

**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 the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

  
Executive Secretary

Dated at Chicago, Illinois, this 15th day of April 1981.