

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25009
Docket **Number** CL-25235

Thomas F. Carey, Referee

(Brotherhood of Railway, Airline and Steamship Clerks
(Freight Handlers, Express and Station **Employes**

PARTIES TO DISPUTE: (

(Northeast Illinois Regional Commuter Railroad Corporation

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (**GL-9803**) that:

1. Carrier violated the Agreement Rules, particularly the February 7, 1965 National Mediation Agreement, when it failed to compensate Mr. John T. Simpson **\$1,628.22** per month, his guaranteed rate of pay, when it abolished his position and he was subsequently furloughed as a result of said abolishment, and

2. Carrier shall be required to compensate Mr. Simpson **\$1,628.22** beginning with the month of October, 1981 and for each and every month thereafter until such time as this matter is resolved including any and all increases in pay due to the implementation of a new wage agreement and COLA provisions thereof.

OPINION OF BOARD: On March 20, 1980, the Interstate Commerce Commission issued DSO No. 1437, wherein the Illinois Regional Transportation Authority was granted authority to operate commuter service over **the lines** of the bankrupt Chicago, Rock Island and Pacific Railroad Company. The RTA was instructed by DSO 1437 that the "terms and conditions" for employees were to be developed as follows:

"Employees -- Under 49 U.S.C. §11125(b), RTA must hire **RI** employees necessary to provide the authorized service and **assume** those employees for the directed service period.

In complying with Section 11125(b)(4), RTA may either utilize the **employee protection procedures** established in DSO No. 1398, &T--Operate--C&P, supra, 360 I.C.C. 289 at 300-303 or negotiate new employee protection terms with the affected RI employees."

It should be noted that the RTA had an arrangement with the Chicago and North Western Transportation Company where the C&NW acted as Agent for the RTA and served as the commuter line operator. In that role, the C&NW entered into **an** agreement on March 22, 1980, with the several organizations representing affected employees, including the Brotherhood of Railway and Airline Clerks. That Agreement contained **some** eight (8) provisions concerning the hiring procedures and employment status of Rock Island **employees**. That Agreement, which is found to be controlling, contains the following provisions, the application and meaning of which are central to the instant dispute before the Board:

1. Pursuant to 49 U.S.C. Section 11125 and Directed Service Order No. 1437 issued by the Interstate Commerce Commission on March 21, 1980, the Chicago and North Western Transportation Company as agent for the Northeast Illinois Regional Commuter Railroad Corporation and for the Regional Transportation Authority, Directed Service Carrier, shall hire the employees of the Chicago, Rock Island, and Pacific Railroad to the extent that they are necessary to the operation of the Rock Island commuter service in Northeast Illinois and shall assume the existing employment obligations and practices of the Rock Island for those employees including agreements governing rates of pay, **rules** and working conditions, and employee protective conditions **for** the period during which Directed Service Order No. 1437 is effective.

2. When the Chicago and North Western Transportation Company enters upon and begins operation of the Rock Island commuter service, the particular employees of the Rock Island hired hereunder shall be those particular Rock Island employees who held jobs necessary to the operation of the commuter line at the time that the Kansas City Terminal ceased operation of the Rock Island commuter service as a directed service carrier.

3. The C&NW will retain and continue only those positions and hire only those employees necessary for the operation of the Rock Island commuter service.

4. The hiring of Rock Island employees hereunder shall commence whenever, after **12:01** a.m. on March 24, 1980, that the C&NW actually enters upon and begins operation of the Rock Island's Chicago commuter line.

5. The hiring of Rock Island employees hereunder shall continue for as long as the C&NW as agent for the Northeast Illinois Regional Commuter Railroad Corporation and for the Regional Transportation Authority, Directed Service Carrier, shall operate the Rock Island's Chicago commuter line, but in no event beyond **11:59** p.m. on May 31, 1980.

6(a) All those positions necessary for operation of Rock Island commuter service which were in effect on March 21, 1980 will be continued in existence from the commencement of Chicago and North Western Transportation Company operation of such service as agent of the directed service carrier on March 24, 1980 until **11:59** p.m. on March 31, 1980. Incumbents of these positions will continue on these positions and will not **be permitted** to exercise seniority to other positions nor will they be subjected to displacement during that period.

"6(c) Individuals hired initially who as a result of the procedure established herein do not secure a job in this operation of the commuter line will be terminated from this hiring arrangement without any preservation of rights or benefits with the C&NW. In the event it later develops during the period of the directed service that additional hirees are required, a special bulletin will be posted requesting additional applicants from the appropriate seniority roster.

7. The C&NW shall not be responsible to any employees of the Rock Island hired hereunder for any claims or debts due and **owing** to such individuals because of any employment, services performed, or obligations incurred on work done prior to the actual hiring of such individuals by the C&NW.

8. Employees of the Rock Island hired hereunder shall not obtain any seniority or other rights whatsoever with respect to the Chicago and North Western Transportation Company, and shall not be entitled to wages or any other benefits under the collective bargaining agreements of the **C&NW**. Employees of Rock Island not hired hereunder shall have no relationship whatsoever with the **C&NW**.

Signed at Chicago, Illinois, this 22nd day of March, 1980.'

Effective June 1, 1981, acting as **directed** service operator, NIRCRC assumed management of the Rock Island suburban commuter line, terminating its agency relationship with C&NW-T. On May 29, 1982, the Carrier indicates that DSO No. 1437 and the March 22, 1980 Agreement expired. The Carrier was reportedly in the process of its eventual purchase of the line.

There is no dispute the Claimant was hired by the C&NW-T pursuant to the March 22, 1980 Memorandum Agreement and carried over into NIRCRC service with the June 1, 1981 transition.

The record shows that in September 1981, the Trustee of the Rock Island estate ordered Carrier to vacate the **LaSalle** Street Station Building, so that demolition of that structure could commence. The commuter operation and ticket offices were relocated south of the former structure in six trailers, and a new temporary ticket office was established. Since the new accommodations did not require the level of custodial services necessary when the **LaSalle** Street Building was being utilized, Carrier abolished Matron Position No. 013 and Window Washer Position No. 014 effective close of business, September 30, 1981. The Carrier reports that when the occupants of these positions exercised seniority, Claimant, occupant of Janitor Position No. 018, was displaced. There were no junior employees whom he could displace, thus, he was furloughed.

On February 23, 1982, Claimant was briefly recalled to service and subsequently furloughed on March 31, 1982.

This claim for protective pay under the February 7, 1965 National Mediation **Agreement** was filed November 25, 1981 to cover the initial furlough period.

Following Claimant's furlough after March 31, 1982, he filed another similar claim for payment under the same February 7, 1965 Agreement beginning in April 1982 and continuing thereafter. The Parties have agreed to abide by the Board's decision in this claim in disposing of the entire case.

The Carrier argues that the order issued by the Trustees of the Rock Island estate to vacate Claimant's workplace resulted in the abolishment of two (2) NIRCRC custodial positions, causing the Claimant's displacement and subsequent furlough. The Carrier relies on Section 3 of the Memorandum of Agreement of March 22, 1980, which provided:

"The CNW will retain and continue only those positions and hire only those employees necessary for the operation of the Rock Island commuter service."

The Carrier concludes, in the instant case, that since a "surplus of employees occurred because the positions they occupied were not necessary to the operation, there was no prohibition in not retaining - in 'unhiring' - such employees."

The Carrier asserts that that 'same concept' is contained in DSO 1398 under the section entitled "Status of RI Employees":

"RI employees engaged in directed service operations will neither lose their status as RI employees nor acquire an employment relationship with the DRC . . .

* * *

"Following their release from directed service employment or termination of directed service operations, RI employees hired by the DRC shall revert to their status as RI employees."

The Carrier further concludes that the protective compensation provision of the February 7, 1965 Mediation Agreement are solely the obligation of the bankrupt Rock Island. When the Claimant lost his status in October 1981, he reverted to the status of an unemployed Rock Island employee and any amount owed to him because of this original Rock Island employment must be directed to the Rock Island estate.

The Carrier's reliance on the terms of DSO 1398 is misplaced. The Parties in the original directive were to utilize the "employee protection procedures" established in another DSO No. 1398 or negotiate new employee protection terms. It is clear they chose to develop their own terms. Its those terms and conditions set forth in the Agreement of March 22, 1980 which both the Parties and this Board must follow. It is beyond the authority of the Parties or the Board to modify or add to their language originally selected by the Parties to express their intent.

The Organization maintains that:

"The only purpose of Section 3 is to protect the new operator from claims that all **CRI&P** protected employes must be transferred to the new operation and continued in their surplus and protected status by the RTA, even though they were not needed. In other words, any **CRI&P** employes that were surplus and not needed at the time of takeover (March 24, 1980) would not be able to transfer this status to the new operation. On the other hand, employes that could get a job with the new operator by bulletin, as provided in Sections 6(a) and 6(b) of the agreement, would continue to enjoy all of the antecedent benefits they enjoyed as **CRI&P** employes.

"To read Section 3 in any other fashion would be to make meaningless the **employee** protective provisions of the DSO and Section I of the March 22, 1980 agreement which clearly indicates that former **CRI&P** employes securing employment with the new operator are to be granted full benefits of their protective agreements as well as the benefits of the rules agreements and the wage agreements."

There is no dispute that the Claimant was **"hired"** by the C&NW-T in accordance with the Agreement of March 22, 1980, and was carried over into NIRCRC service with the June 1, 1981 transition. It is also clear that his pay, working conditions, and employee protective conditions for both C&NW-T and NIRCRC were controlled by DSO 1437 and the March 22, 1980 Agreement, at least for the period for which "Directed Service Order No. 1437 is effective." (It should be noted that the current operational status of DSO.1437 is not delineated in the record.)

All eight (8) sections of the controlling "Memorandum of Agreement" must be read together. The Agreement sets forth the understanding of the Parties. It extends considerable latitude to the Carrier in Section 3 to "retain and continue only those positions" and "hire only those employees necessary" for the operation of the Rock Island commuter service. However, once such RI employees are **"retained** and continued" by the Carrier, then the Carrier, under Section 1 of the Agreement, must assume the existing employment obligations and practices of the Rock Island for those employees, including the agreement governing rates of pay, rules and working conditions, and employee protective conditions, for the period "during which DSO No. 1437 is effective."

Section 7 indicates the Carrier shall not be responsible for **"any** claim or debts **due"** owing to work or obligations incurred prior to the actual hiring by C&NW. Section 7 places a significant limit on the liability of the Carrier for claims resulting from "prior work done." However its terms cannot be elevated to the contractual supremacy over and exclude the employee protective requirements of Section 1. Both sections must be read in pari materia. Thus the basis for determining benefits under Section 1 are determined upon the period of the new employment relationship with the Carrier and not upon **an** "obligation incurred on work done prior to the actual **hiring.**"

In the case at bar, the Claimant, once having been hired, is entitled to those "employee protective conditions" which he had been entitled to under Rock Island Agreement in addition to the governing rates of pay, rules, and working conditions. He is limited to whatever eligibility he would have accrued during his periods of service with C&NW-T and NIRCRC and further limited **"for** the period which Directed Service Order No. 1437 is effective."

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 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 violated.

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Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 26th day of September 1984.

