

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union  
(Delaware and Hudson Railway Company)

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood (GL-10152) that:

1. Carrier violated provisions of the N&W Protective Agreement dated April 7, 1965, as adopted on the Delaware and Hudson Railway Company, when Claimant Rosanne H. LeFarr was adversely affected when she was displaced from Stenographer-Clerk Position at Fort Edward, New York on November 16, 1978, and the Carrier refused to establish a test period and compensate Claimant for being adversely affected.

2. Carrier shall now be required to establish a test period as set forth in said April 7, 1965 Memorandum Agreement and compensate Claimant Rosanne H. LeFarr commencing with the month of December, 1978, and continuing each and every month thereafter for any and every month she fails to receive her guaranteed average monthly compensation.

3. Carrier shall further be required to compensate Claimant Rosanne H. LeFarr interest in the amount of 18 per cent compounded annually on all monies due in Item 2 supra on the anniversary date of this claim."

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.

Claim at bar is that Claimant was displaced from her Steno-Clerk position and denied guarantee for salary as per Agreement. A careful and thorough review of the on-property record in this case finds no probative evidence to substantiate the Claim. The Board has searched for proof that Claimant was put in a worse position due to the merger, rather than the Claimant's own actions or other causes, and the manner in which Claimant's earnings were affected. A prima facie case requires more than assertion. The on-property record lacks substantial probative evidence that Claimant's "worse position" with respect to compensation was covered by Agreement provision Section 2(b) of the N&W Inclusion Agreement.

The Carrier denied the Claim on the property. Carrier stated that Claimant's earnings "were not affected by the Merger."

The Organization disputed the Carrier's position on the property and before this Board. We have held many times that the weight of the evidence for any claim is the responsibility of the moving party (Third Division Award 24965). The Organization has failed to meet its burden of proof in the instant case. The Claim must be denied.

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 13th day of April 1989.