NATIONAL RAILROAD ADJUSTMENT BOARD
Form 1 THIRD DIVISION Award No. 30120
Docket No. MS-30589
94-3-92-3-467

The Third Division consisted of the regular members and in addition Referee Martin F. Scheinman when award was rendered.

PARTIES TO DISPUTE: (Burlington Northern Railway
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(Dick G. Pritchard

STATEMENT OF CLAIM:

"Does the Petitioner have the right to be paid his guaranteed rate of pay per the May 6, 1980 contract/agreement between the Burlington Northern Railway (Carrier) and the TCU (Organization) in his current work situation?"

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 employe 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.

Claimant was employed by the Carrier in Missoula, Montana. In November 1987, Carrier sold its line which went through Missoula to a newly formed railroad. The sale created a surplus of clerical employes at Missoula, including the Claimant. Not being able to exercise his seniority to another position in his Missoula home zone, the Claimant became a utility employe on November 23, 1987.

Pursuant to the May 6, 1980 Merger Protection Agreement (Blue Book), Claimant on numerous occasions between March 1987 and February 1991, was offered positions within his home zone. Claimant refused these offers. In March, 1991, Claimant was the successful bidder to a position at Great Falls, Montana, which was outside of his "home zone". That position was bulletined under the veto provisions of the Letter of Understanding No. 20.

After going to Great Falls over Carrier's veto, Claimant started filing claims for the difference between the janitor's rate

and his protected rate. Carrier denied the claim. The Organization appealed the claim. It did not, however, pursue the claim to the conference state, but instead, advised the Claimant he could pursue it on his own. The claim is now before this Board for adjudication.

Claimant argues that as a protected employe he has the right to receive his protected rate of pay for any job he performs so long as he does not decline or fail to use his seniority rights to secure an available position in his home zone with a rate of pay equal or greater than his guaranteed rate. Since he has not declined or failed to secure any jobs in his home zone, Claimant argues that he is entitled to receive his protected rate of pay for the janitor job in Great Falls, even though it was outside of his home zone and was obtained over the Carrier's veto.

According to the Claimant, the fact that his job was obtained over the Carrier's veto only eliminates his right to moving benefits, not his right to his protected rate of pay. Since he was not aware of any Letter of Understanding to the contrary between the Carrier and the Organization, any such letter, he argues, should not be applied against him.

Moreover, even if the letter cited by the Carrier was considered valid, it is not obvious on its face, according to the Claimant, that it has anything to do with his right to receive his protected rate of pay. The fact that the Carrier and the Organization had an understanding that the letter effected protected rates of pay, was, according to the Claimant, unknown to him and, therefore, should not be used against him in this matter. Thus, the Claimant asks that his claim for protected rates of pay be sustained in its entirety.

Carrier, on the other hand, argues that since the Claimant voluntarily exercised his seniority to obtain a position outside of his home zone which was subject to the Carrier's veto, he is not entitled to his protected rate of pay. Carrier claims that its position is supported by Letter of Understanding No. 20, dated October 8, 1982, between Carrier's Director of Labor Relations and TCU's General Chairman. Letter of Understanding No. 20 provides in pertinent part as follows:

> **"3. Appendix A protected employees who attempt to voluntarily bid or exercise seniority displacement rights out of their home zone (including Rule 20 applications) will be subject to the veto provisions of Appendix L of the December 1, 1980 Agreement.**

If Carrier invokes the veto provisions of Appendix L and the protected employee nevertheless executes the move out of his home zone, he will not be entitled to any moving benefits and his home zone will not change.

If Carrier does not invoke the veto provisions of Appendix L and the protected employee moves to a point outside his home zone, this will become his new home zone."

According to the Carrier, since the implementation of this Letter of Understanding in October 1982, it has been mutually interpreted and jointly applied by the parties that a protected employe leaving his home zone over Carrier's veto is not entitled to be paid protection payments while outside his home zone. The parties' interpretation of their agreement, according to the Carrier, is controlling. Thus, Carrier insists that the Claimant's claim should be denied.

After careful review of the entire record, we are convinced that the claim must be denied.

Claimant has presented no evidence casting doubt upon the legitimacy of Letter of Understanding No. 20. Claimant's alleged ignorance of its existence does not make it any less applicable to this matter.

Claimant also may not ignore the mutual interpretation of the letter which the Carrier and the Organization have agreed upon and jointly applied since 1982. The fact that he does not agree with the parties' interpretation of their letter is irrelevant. Numerous Awards from this Board have held that where the parties to an Agreement are in accord as to its application, claims to the contrary must be denied. While it might be argued that the letter is somewhat ambiguous, it is also well-established that the best standard to be applied in resolving any ambiguity is the agreed upon interpretation adopted by the parties who negotiated and implemented the Agreement. In other words, there can be no better source for understanding the meaning of an Agreement than the interpretation given by the parties who actually negotiated and implemented it.

Claimant has presented no evidence to challenge the agreed upon interpretation and application of Letter of Understanding No. 20 put forward by the Carrier. Claimant has simply urged us to ignore the parties' Letter of Understanding and their longstanding mutual interpretation and implementation of that letter because he was ignorant of them. If the opinion of one employe was permitted to undermine their longstanding negotiated agreements of the

parties, the collective bargaining relationship would soon be in chaos. This we cannot accept. Therefore, the claim must be denied in its entirety.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 4th day of April 1994.