

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31181
Docket No. CL-31463
95-3-93-3-452

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

(Transportation Communications
(International Union
PARTIES TO DISPUTE: (
(Chicago, Central & Pacific Railroad Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Organization (GL-10971) that:

1. Carrier violated the Agreement between the Parties, when on July 1, 1992, it failed to properly apply General Wage Increases and Cost-of-Living Allowances to all former Illinois Central Railroad employees, who have grandfather rates of pay.
2. Carrier shall now be required to allow all former Illinois Central Railroad employees, who have grandfather rates of pay, retroactive payment for all wages lost, due to a violation of the Clerks Agreement.
3. Carrier shall now be required to allow future General Wage Increases and Cost-of-Living Allowances, in accordance with the Clerks Agreement, to all former Illinois Central Railroad employees who have grandfather rates of pay."

FINDINGS:

The Third 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 waived right of appearance at hearing thereon.

At issue in this case is application and interpretation of Rules 41 and 42 of the May 31, 1991 Agreement between the Parties. Those Rules read in pertinent part as follows:

"RULE 41
COST OF LIVING ADJUSTMENTS

(a) The Carrier shall provide on July 1 of each calendar year listed below, a cost-of-living adjustment produced under the Consumer Price Index (CPI-W) as published by the Bureau of Labor Statistics, U.S. Department of Labor. The cost-of-living adjustments shall be adjusted up or down, whichever the case may be, subject to a maximum upward or downward adjustment of five (5) percent per annum....

(c) The cost of living wage adjustments shall apply to the pro rata daily rate of pay, overtime, and to all other wage allowances (excluding Carrier 401-K contributions) in the same manner as basic wage adjustments would apply....

RULE 42
GENERAL WAGE INCREASES

The basic rates of pay in effect on June 30, 1991, shall be increased as follows:

(a) Effective July 1, 1991, a General Wage Increase of 3% will be applied to the basic rates of pay with the increase offset against the combined COLA increases granted on January 1, 1991, and July 1, 1991...

(e) Effective July 1, 1995, a General Wage Increase of 3% will be applied to the basic rates of pay with the increase offset against the COLA increase granted on July 1, 1995."

On December 24, 1985, Carrier purchased a portion of the Illinois Central Gulf Railroad. At that time, certain former Illinois Central Gulf (ICG) employees were provided a "grandfather" rate of pay, instead of requiring them to accept the lower basic rates of pay established for Chicago Central employees.

It is the position of the Organization that Rules 41 and 42 of the May 31, 1991 Agreement require that the grandfathered employees receive both the yearly Cost of Living Allowance (COLA) and the yearly General Wage Increase (GWI). Carrier maintains that since the "grandfathered" rates of pay are, per se, not "basic rates" of

pay, such employees should receive only COLA increases each year, as provided under Rule 41.

There is no provision in Rule 42 for application of the General Wage Increase to "all other wage allowances" as is specifically provided in Rule 41 (c). By its nature, grandfathering secures for employees higher rates of pay than are normally associated with their positions. Accordingly, they are by definition not "basic" rates of pay. Under Rule 41(c) of the Agreement, however, those employees remain eligible for yearly Cost of Living Allowance (COLA) increases. Moreover, since the provisions of Rule 42 do not apply to the current "grand-fathered" employees, they are entitled to the full COLA as determined by the CPI-W under Rule 41(a).

With respect to the third paragraph of the claim, this Board has no authority to grant hypothetical prospective relief to hypothetical prospective employees. Accordingly, that portion of the claim is dismissed.

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 Third Division

Dated at Chicago, Illinois, this 26th day of September 1995.