

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31343
Docket No. MS-31688
96-3-93-3-710

The Third Division consisted of the regular members and in addition Referee Jacob Seidenberg when award was rendered.

PARTIES TO DISPUTE: (A. R. Bostic, et al.
(Consolidated Rail Corporation

STATEMENT OF CLAIM:

"This is to serve notice, as required by the rules, of the NATIONAL RAILROAD ADJUSTMENT BOARD of an intention to file an Ex Parte Submission within thirty (30) days covering an adjusted dispute between:

<u>NAME</u>	<u>EMP NO.</u>	<u>DATE OF HIRE</u>
A.R. Bostic	759254	1-06-93
T.B. Pritchett	759308	1-25-93
J.J. Gibbons	759342	2-11-93
J.S. Getzoff	759373	3-05-93
K.D. McDonald	759372	3-05-93
V.M. Cappard	766028	5-06-93
A.T. Rajahn	766197	6-03-93

and CONSOLIDATED RAIL CORPORATION involving this question:

1. Commencing October 1, 1993 pay adjustments were in effect that increased new hires pay from Fifty Percent (50%) to Seventy Five Percent (75%) of the going rate per job assigned. However, to this date we have not been compensated back pay and for such actions we are seeking retroactive pay from the time of employment up to October 1, 1993."

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.

The operative question by the Claimants is whether they were initially paid the wage as advertised by the Carrier in the Newark Star Ledger in November 1992, and that they did not receive retroactive pay when this initial hiring rate was contractually adjusted.

The Claimants were clerks hired by the Carrier at various dates in the intermodel area at South Kearney, New Jersey. The cited newspaper ad stated the job had an approximate starting salary of \$21,000.00. The Claimants stated they were informed they would receive, 75% of the starting salary, but, filed a complaint when they received 75% of the 75% entry rate.

The relevant Agreement provisions are -

November 30, 1985 National Agreement which states in part:

"Article III - Rate Progression

Section 1 - Service First 60 months

Employees entering service on or after effective date of this Article ... shall be paid as follows. ... (a) for the first twelve (12) calendar months of employment shall be paid 75% of the applicable rate. ...

Article VII - Service Work and Intermodel
Service Section

Section 1 - Coverage

(a)

(b) ... with respect to intermodel services, this Article shall be applicable to positions preponderantly engaged in work in connection with the operations of intermodel facilities such as, but not limited to ... clerical. ...

Section 2 - Rate of Pay

(a) For positions described in Section 1 above, the full rate of pay for employees who establish seniority after the date of this Agreement shall be 75% of the rate in effect as of November 30, 1985 and shall be subject to Article III Rate Progression."

June 1, 1991 National Agreement:

"Article VI - Service Work and Intermodel Service

Effective the date new rates are established pursuant to the National Salary Plan, as provided for in Section 1(b) of Article IV, the provisions of Article VII, Service Work and Intermodel Service, of April 15, 1986 National Agreement shall no longer be applicable."

The Claimants assert that the Carrier engaged in misleading advertising when it advertised these clerical jobs in the Newark, New Jersey newspaper stating they would pay approximately \$21,000 annually. They added when interviewed by the Carrier's Human Resources Personnel, they were told they would receive 75% of the assigned rate. They were not told that they would receive 75% of the 75% rate. The Claimants stated they were doing the same work as senior employees, and diligently applying themselves to their jobs. It was unfair for the Carrier to pay them half of what they had been promised for the job. The Claimants stressed they were only seeking the compensation which they had been promised when hired.

The Carrier denied that it had mislead or falsely promised the Claimants the compensation they would receive for the jobs for which they were hired at the Intermodel Terminal at Kearney, New Jersey. As such, their rates of pay were subject to Article VII of the 1986 National Agreement which provided that intermodel employees receive 75% of the rate in effect on November 30, 1985, subject to the Article III rate progression. This rate progression provided that all new employees receive 75% of the full rate of their positions for the first full year of their employment. Therefore, the Carrier maintains that the Claimants, as intermodel employees, were paid 75% of the former full rate of their jobs and as new employees they were paid 75% of that 75% rate. The Carrier stated that the Claimants misunderstood the explanation of their compensation for the first year of employment.

The Carrier stated that the June 1, 1991 National Mediation Agreement provided that when the October 1, 1993 TCU National Salary Plan took effect it provided for Article VII to be superseded which Article had required the 75% pay for intermodel positions.

The Carrier denies that it is guilty of any Agreement violation and that the Claimants were paid exactly as the 1986 National Agreement prescribed.

The Carrier further stated that the Claimants are not entitled to any retroactive pay as a result of the National Salary Plan pursuant to the 1991 National Agreement. While it is true that Article VI of the 1991 Agreement superseded Article VII of the 1986 National Agreement, there is no provision in 1991 Agreement for any back pay or retroactivity. It is therefore beyond the authority of this Board to grant such retroactivity.

The Carrier requests the Board to deny the claim in its entirety.

The Board finds no basis in the record to sustain the claim and therefore it is hereby denied.

The Board finds no evidence that the Carrier misled the Claimants as to the compensation they would receive as Clerks in the Intermodel Terminal. While the Carrier could have expended greater efforts to explain the interaction of Article III and Article VII of the 1986 Agreement on intermodel employees, because the concepts contained therein are fairly convoluted, nevertheless there is no evidence of chicanery on the part of the Carrier's employees, and therefore there is no valid basis to sustain the claim.

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The Board also finds no valid basis on the record before it to grant the Claimants any retroactive compensation.

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 25th day of January 1996.