

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Award No. 31938  
Docket No. CL-32622  
97-3-95-3-517

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:**  
(**National** Railroad Passenger Corporation (AMTRAK))

**STATEMENT OF CLAIM:**

“Claim of the System Committee of the Organization (CL-11172) that:

The following claim is hereby presented to the Company in behalf of Claimant K. Kilgallon:

- (a) The Carrier violated the Clerks’ Rules Agreement effective July 21, 1972, as revised, particularly Rule 11 and other rules, as well as Articles IV and **VII** of the September 6, 1991, Mediation Agreement, when they waived the entry rate for clerical employee Mark Coca while he occupied the position of Material Control Clerk, located at the **Material** Department, Amtrak Maintenance Facility, Rensselaer, NY and then refused to waive the entry rate for Claimant Kilgallon. who is senior to employee Coca, when she displaced Coca from the involved Material Control Clerk position, effective March 25, 1994.
- (b) The Carrier should now waive Claimant **Kilgallon’s** entry rate and compensate her at the full 100% rate (currently **\$13.53** per hour) for her Material Control Clerk assignment, eight (8) hours per day, as well as any overtime earned, commencing March **25, 1994** and continuing for each and every work day thereonafter minus the dates that the Carrier has already allowed the 100% rate to Claimant Kilgallon, on account of this violation.

- (c) The Carrier should also comply with all of the conditions and requirements of **Article VII**, including allowing the waiver of the entry rate to continue so long as Claimant **Kilgallon** remains on the position and that the General Chairman be notified of this waiver as well as the **names** of the employees that will be impacted.
- (d) This claim has been presented in accordance with Rule 25 and should be allowed.”

**FINDINGS:**

The **Third** Division of the **Adjustment** Board, upon the whole record and all the evidence. **finds at:**

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, 193-t.

This Division of the **Adjustment** Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

It is uncontroverted on the record that Carrier’s local official erroneously waived **Mr.** Coca’s entry rate. It is also uncontroverted that Carrier compensated Claimant at the contractually established 95 percent rate. In fact, she was in the seventh month of the 95 percent rate when she tiled the instant claim. However, it is also unrefuted that once Claimant filed her claim and the Carrier recognized its error with respect to Mr. Coca, it proceeded to make arrangements for recoupment from him of its erroneous overpayment. Accordingly, there is no evidence that Mr. **Goca** was ultimately paid at a higher rate than Claimant. Thus, the instant claim must be denied.

**AWARD**

Claim denied.

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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 4th day of March 1997.