

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 32169
Docket No. CL-32650
97-3-95-3-582

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: (
(Illinois Central Railroad

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-11188) that:

- (1) Carrier violated the effective Agreement when it failed to properly compensate Extra Clerk T. Elliott the lump sum payment owed her pursuant to Article II, Part A, Section 4, of the June 1, 1991 National Agreement.
- (2) Carrier shall now compensate Extra Clerk T. Elliott the difference between what she was paid, \$359.32, and the full \$732.00 which was due her pursuant to said Agreement, a difference of \$372.68.”

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 were given due notice of hearing thereon.

An Agreement was reached between the Organization and most national railroads effective June 1, 1991 covering wages and other issues. The Carrier was a party to the Agreement. Article II, Part A, Section 4 of the Agreement provides as follows:

"Section 4 - Fourth Lump Sum Cost-of-Living Payment

Subject to Sections 6 and 7, employees with 2,000 or more straight time hours paid for (not including any such hours reported to the ICC as constructive allowances except vacations, holidays, paid sick leave and guarantees in protective agreements or arrangements) during the period October 1, 1993 through September 30, 1994, will receive a lump sum payment on January 1, 1995 equal to the difference between (i) \$732.00, and (ii) the lesser of \$366.00 and one quarter of the amount, if any, by which the Carriers' 1995 payment rate for foreign-to-occupation health benefits under the Plan exceeds the amount of such payment rate for 1994."

Also at issue in this case are Article XV Grievance Resolution Bonus and Side Letter #1.

"ARTICLE XV - GRIEVANCE RESOLUTION/BONUS

- (a) On February 3, 1995, all employees in active service on positions covered by this agreement will be paid one thousand (\$1,000.00) each.
- (b) Upon payment of the amount indicated in paragraph (a), all claims and grievances, other than those involving disciplinary action, are considered resolved without prejudice to the position of either party and with the understanding that such settlements will not be cited by either party in any future case, nor used by either party to allege that the other has agreed to a particular practice.
- (c) Any employee who currently has a claim pending (except for those in Side Letter No. 2 to this Agreement) shall have the option of advising that he/she wishes to waive the \$1000.00

Grievance Resolution/Bonus, in order that the claim(s) may be progressed. Such option must be made in writing and received by the General Chairman within ten days of the effective date of this Agreement."

SIDE LETTER #1 (January 23, 1995)

"...This will confirm our understanding reached during discussions leading to the Memorandum of Agreement resolving wages and work rules issues.

It is understood that the Agreement does not negate the January 1, 1995 lump sum payment due under the provisions of Article II, Section 4 of the June 1, 1991, T.C.I.U. National Agreement.

Ss: James M. Jarrell and M. L. Scroggins"

During the period covered, Claimant was an Extra Clerk and was subject to call on any position to which Carrier assigned her. It is undisputed on the record that during the period Claimant performed service or received vacation and holiday pay for a total of 2200 straight-time hours. On some of the dates covered, Claimant was called and worked on a so-called "T" position (Excepted or Partially Excepted Position). Claimant was never the actual incumbent of any "T" position, but was called only to perform training and fill vacancies. In computing Claimant's lump sum payment pursuant to Section 4 (*supra*) Carrier compensated Claimant only \$359.32, or \$372.68 less than the full lump sum of \$732.00. Carrier maintained that while Claimant was filling a "T" position the time was not creditable toward payment of the lump sum.

In a nearly identical case between these same parties the Board found in Third Division Award 31894 as follows:

"The Claimant was not regularly assigned by bid or otherwise to a 'T' position. His classification throughout the period was that of Extra Clerk. Article II, Part A unqualifiedly states that employees with the required hours of work and pay 'will receive a lump sum payment.' Nothing is mentioned as to the type of work assigned (as long, of course, as the employee retains a permanent classification in the covered unit, which is the case here). He received a higher rate of pay for his temporary

assignments, obviously because of the higher responsibility. There is no basis for this to deny him the lump sum payment based on his total hours worked."

In light of the clarity of the applicable contract language within this case and the previous decision in Award 31894, the instant claim is also sustained (See also, Third Division Award 31105).

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 13th day of August 1997.