NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 32582
Docket No. SG-34369
98-3-97-3-876

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Port Authority Trans-Hudson Corporation

STATEMENT OF CLAIM: As shown in Docket No. SG-34369 and not repeated herein.

FINDINGS: The Third Division of the Adjustment Board finds:

That the dispute was certified to the Third Division of the Adjustment Board ex parte by the petitioning party; and

Under date of April 17, 1998, the petitioning party addressed a formal communication to the Arbitration Assistant requesting withdrawal of this case from further consideration by the Division which request is hereby granted.

AWARD

Claim withdrawn.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 29th day of April 1998.

LABOR MEMBER'S DISSENT TO
AWARD 32582, DOCKETS CL-32899
(REFEREE E. C. WESMAN)

The Majority Opinion has factually erred in its reading of the record which has produced an erroneous award depriving the Claimants of their contractual rights. Its misunderstanding of the dispute is readily apparent when the concluding paragraph of the award incorrectly states the facts as follows:

> "In this case, the Carrier offered to meet the Organization wage equity demands in exchange for an equivalent offsetting consideration to match the UTU's relinquishing a third crew member position. The TCU declined to do so."

The aforementioned statement is incorrect. The Carrier never offered to meet the Organization's wage equity demand nor did the TCU decline such an offer because it was never made. In fact the Carrier even admitted in its submission page 5 first full paragraph, that it would be impossible for the TCU to agree to any offsetting consideration when it stated the following:

> "The contractual provision of the TCU's ARTICLE IV. EQUITY CONSIDERATIONS, clearly requires TCU to demonstrate that it must agree to any equivalent offsetting considerations agreed to by the other union. (See Exhibit 8)

> TCU cannot do so in this circumstance. [Emphasis added] The present TCU/SLR agreement contains no provision or payment methodology linked to manning requirements as contained in the UTU's crew consist agreement."

Apparently, the Majority misunderstood the offer made in the third and fourth paragraphs of the Carrier's August 30, 1994 letter (TCU Exhibit No. 4) as an offer to meet the Organization's wage equity demands.

The pertinent portion of that letter states:

> "As to your request for additional benefits, more specifically side letter No. 2 of the UTU agreement, the carrier would be willing to extend the benefits in this letter to all of its contractual employees.
>
> The Carrier on the other hand would ask that you also accept the conditions set forth in A Article 20-F, Paragraph 2."

The Majority confused Side Letter No. 2, which deals with the premiums on Health and Welfare coverage, for that of a wage equity offer. The fourth paragraph was the "quid pro quo" for the third paragraph, it had nothing to do with wage equity. The Carrier never offered, nor did the TCU decline, a wage equity offer in exchange for an offsetting consideration to match UTU's relinquishing a third crew member. The Majority took a left turn when it

should have turned right and it ended up far afield mired in a morass of its own perplexity.

For purposes of clarification we will reiterate the facts. The dispute involved a "me too" Agreement signed between the parties which allowed that if any subsequent Agreements were signed between the Carrier and other Unions that exceeded TCU's wage package TCU employees would be entitled to those additional wages.

In stands unrefuted that on June 11, 1994, the Carrier reached an agreement with the UTU which provided for wage increases exceeding those included in TCU's Agreement. Under Article III of the UTU Agreement, UTU employees received the same wage increase provided under the TCU Agreement, along with an additional short crew allowance of $2.00 per hour and another $8.00 added to the daily rate.

As part of the TCU "me too" Agreement TCU requested the additional $8.00 per day. The Carrier argued that the $8.00 was also part of the short crew allowance and TCU employees were not entitled to it. The issue in this dispute was straight forward -- was the additional $8.00 per day part of the

short crew allowance or not? If it was not part of the short crew allowance then TCU employees were entitled to the same monies. A close reading of the record indicates that it was not part of the short crew allowance. For proof of such I would point the Majority to TCU Exhibit No. 11 which is a copy of the applicable portion of the UTU Agreement of May 19, 1989, the first Agreement to address the short crew allowance and potential reduction in crew numbers. Paragraph B under Compensation set the short crew allowance at $2.00 per hour on those crews which did not operate with a third brakeman. It is important to note that this language did not eliminate the third brakeman on crews, but instead established an additional $2.00 per hour rate for short sized crews if ever instituted. The reality is the Carrier did not operate any short sized crews until 1994 after the parties agreed to the two man crews (See Carrier's Exhibit 3, Paragraph B). After agreeing to such the $2.00 from the previous 1989 Agreement then kicked in for the Brakeman. There is no mention in the 1994 Agreement about any monies much less an additional $1.00 per hour.

While the case was on the property the Carrier offered no proof that the 1989 Agreement was modified from $2.00 per hour to $3.00 per hour nor could it even point to any inference in the 1994 Agreement to suggest such a conclusion.

Before this Board the Carrier offered "de novo" Exhibit 5 which purported to be a copy of negotiation notes of August 3, 1993, between the Carrier and the UTU regarding crew reduction. The Carrier pointed the Board to its barely legible note that says:

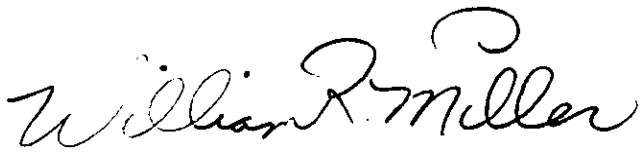
> "Eliminate brakeman's position increase crew consist from 2 to 3 three dollar."

Based upon the inadmissable aforementioned scrawling the Board was suppose to jump to the conclusion that experienced negotiators decided that the UTU employees were entitled to an extra $8.00 per day, but somehow did not think it was important enough to include such in the language of the 1994 Agreement. The Majority correctly chose not to rely on this inadmissable evidence and "de novo" Exhibits 6 and 7 but then without any proof admissible or inadmissable it took a giant leap of faith based upon its misunderstanding

of Side Letter No. 2 and Carrier's letter of August 30, 1994 to render an award which is contrary to the actual facts.

The Award is in error and has no redeeming value and because of such I strenuously dissent.

Respectfully submitted,



William R. Miller
TCU Labor Member, NRAB
May 11, 1998