

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Award No. 34152  
Docket No. TD-33785  
00-3-97-3-262

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

**(American Train Dispatchers Department  
(International Brotherhood of Locomotive Engineers**  
**PARTIES TO DISPUTE: (**  
**(Northeast Illinois Regional Commuter Railroad**  
**( Corporation (NIRC/METRA)**

**STATEMENT OF CLAIM:**

“Claim is hereby submitted for compensation due to Mr. Don R. Nelson as provided in accordance with the current working agreement as set forth in Article 20.

Mr. Nelson is currently being paid at a rate of 85%. Effective January 1, 1995 Don's rate of pay for all service performed as Train Dispatcher clearly should have been 100%.

The Organization is making claim to the full dispatcher rate due Mr. Nelson beginning sixty (60) days prior to the claim date [March 24, 1996] and continuing until the proper adjustments to the Claimant's daily rate are reconciled.”

**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.

The Organization filed a claim by letter dated March 24, 1996 asserting that the Claimant's rate of pay "effective January 1, 1995 . . . for all service performed as a Train Dispatcher clearly should have been 100%." The Carrier immediately denied the claim as untimely and not properly presented within 60 days from date of occurrence. The Organization thereafter responded that this was a continuing claim and compensation due from 60 days prior to the March 24, 1996 date of claim. The Carrier responded that the continuing claim was new and as amended, was improper and a violation of the appeal process. Procedurally, the issues broadened as the Organization's May 16, 1996 appeal was followed by an Organization allegation of August 7, 1996 that the Carrier had failed to reply within the 60-day time limit. The Carrier maintained it timely replied and that the claim was as per Third Division Award 31472, void ab initio, and therefore having no further status before the Board.

As for the status before the Board, the merits of a claim may not be approached if there are procedural violations of the Agreement. We find none. The Organization's initial letter clearly refers to a continuing violation and its clarification of May 16, 1996 is not found to be an improper amendment of the claim. Similarly, we studied the Organization's argument that the Carrier's response was untimely. We reject that argument. The Carrier properly progressed this claim to the last known address of the General Chairman. We are persuaded that the claim was timely responded to. As such, the merits of the claim must be addressed.

The background to the dispute before the Board is as follows. The record confirms that the Claimant established a seniority date as Train Dispatcher on February 3, 1994. The Carrier maintains without rebuttal that the Claimant was subject to Article III (Rate Progression) of the National Mediation Agreement, effective February 26, 1987. As per that Agreement, the Claimant entered Train Dispatcher service at a 75% rate and would obtain applicable 5% increases every 12 calendar months until he reached the 100% applicable rate of pay.

The parties thereafter negotiated Article 20. There is only one difference between Article 20 (Rate Progression) and Article III (Rate Progression). Article 20 states that "Employees entering service on and after January 1, 1995 on positions covered by an agreement with ATDD of BLE shall be paid as follows. . . ." The Organization argues that the sentence was clear to apply to all employees entering service after January 1,

1995. The Claimant entered and established seniority prior to that date and therefore should have been brought up to the 100% rate of pay for service performed as of January 1, 1995. The Organization argues that Article 20 supersedes Article III and as such, the Claimant is neither affected by the superseded Article III, nor covered by Article 20 which is applicable only to employees entering service after January 1, 1995.

We reviewed this claim carefully. We note the Carrier's denial that "there is nothing in Article 20 that states employees subject to rate progression before the Agreement was signed would be brought up to the full rate of pay on its effective date. . . ." This is the threshold issue on the merits. Our study of the language of the Agreement finds no language included in Article 20 to effect this outcome, as suggested by the Organization. The inclusion of the one sentence wherein the revised provisions of the negotiated Agreement incorporating the provisions of Article III of the February 26, 1987 National Agreement into Article 20 reiterate and do not negate the effects. We find no language indicating intent of the parties to retroactively change the status of employees already under the rate progression after the inclusion of Article 20. Nor do we find the one sentence added to denote a clear intent to construct such a change.

The Board does not find merit to the claim in the language of the Agreement. Nothing in Article 20 states that the Claimant's rate progression in effect prior to the date of January 1, 1995 would effectively stop. Nowhere in the language of Article 20 can the Board find persuasive evidence that when the parties negotiated Article 20, it was their intent that all employees who entered service prior to January 1, 1995 would be exempt from all future progression and receive 100% of the applicable rate of pay on that date. Nothing in the language and facts at bar indicate such a change was constructed in the Collective Bargaining Agreement revision of Article 20. Therefore, the claim must be denied.

**AWARD**

**Claim denied.**

**Form 1**  
**Page 4**

**Award No. 34152**  
**Docket No. TD-33785**  
**00-3-97-3-262**

**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 19th day of June, 2000.**