

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36412
Docket No. CL-37009
03-3-01-3-633

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

PARTIES TO DISPUTE: (Transportation Communications International Union
(National Railroad Passenger Corporation (Amtrak)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-12779) that:

- (a) The Carrier violated the Clerical 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, Case No. A12447, when commencing June 25, 2000, they arbitrarily applied an entry rate to Claimant Walier, reducing her earnings from 100% to an 80% level, while she occupied Clerk Typist position, located in the Division Offices, Rensselaer, NY;
- (b) The Carrier should now restore Claimant Walier's rate to the 100% level and compensate her retroactively for any earnings that were paid at less than the full 100% rate of pay, commencing June 25, 2000, and continuing for each and every day thereafter, on account of this violation;
- (c) Claimant Walier should also be allowed an additional eight (8) hours punitive pay, based on the pro rata rate of her position, commencing June 25, 2000 and continuing for each and every day thereafter, until this violation is corrected to the employees satisfaction;
- (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 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.

Claimant Bonnie Walier was hired by Amtrak as a Clerk/Typist on August 31, 1998, at Albany/Rensselaer, New York. When the Claimant entered Amtrak service, she was given a pay rate of 75 percent (as entry level) of a Clerk/Typist regular rate. In November 1998, the TCU District Chairman notified Amtrak supervision that the Claimant had previously worked for Conrail and had an employment relationship within one year of the time she came to work with Amtrak. As a result of this information, Amtrak implemented a Personnel Action Request changing the Claimant's pay from 75 percent of the Clerk rate to 100 percent. The 100 percent rate took effect on November 14, 1998. The Claimant was also paid the shortfall in wages from August 31, 1998 (her hire date) to November 14, 1998, when she began to receive the full Clerk rate. The Claimant received 100 percent of the Clerk's rate until June 25, 2000, when her rate was reduced from 100 percent to 80 percent. This dispute centers on whether on June 25, 2000, Amtrak had the right to reduce the Claimant's pay to the entry level of 80 percent.

The Carrier contends that the information supplied to Amtrak supervision concerning the Claimant's prior employment with Conrail was misapplied by local supervision in Albany/Rensselaer and the Claimant was upgraded in November 1998 from 75 percent of the Clerk's rate to 100 percent in error. She had not received compensation from Conrail within one year of her hire date with Amtrak, so her 75 percent hire rate was correct. Amtrak was informed in early 2000 that the Claimant's pay rate had been changed in November 1998 by mistake and it took action to rectify the error. On June 25, 2000, it reduced the Claimant's pay from 100 percent to the correct entry rate in effect at that time of 80 percent. Amtrak did not attempt to recover any overpayments made to the Claimant.

The Board reviewed the material pertinent to this case. It is the Board's conclusion that when the Claimant was hired in August 1998, her pay rate was correctly set at entry level of 75 percent of the full Clerk's rate. Her rate should not have been increased based on the statement supplied to local Management concerning the Claimant's past work record. It is clear from a reading of Rule 11 (quoted by both parties) that the Claimant was required to have performed service for Conrail and be compensated for it within one year from the time she was employed by Amtrak in order for her to receive credit for such service in calculating her beginning pay rate. Being laid off from Conrail is not performing service for compensation.

The Board also concludes that the Carrier acted within its rights when it reduced the Claimant's pay back to 80 percent of the full rate when it discovered the mistake that was made concerning her pay rate increase in November 1998. The record reveals

that the Claimant was allowed to keep the more than 20 percent excessive pay that she received. She should consider that overpayment a windfall and move on from here.

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 17th day of March 2003.