

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36991
Docket No. MS-37955
04-3-03-3-359**

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

**(Charles G. Hefler, Jr.
PARTIES TO DISPUTE: (
(Canadian National/Illinois Central Railroad**

STATEMENT OF CLAIM:

- "1. The Carrier violated the GMO Merger Agreement, Appendix 'H,' of the current agreement, when the Carrier suspended Mr. C. Hefler's monthly compensation guarantee package.**
- 2. The Carrier shall now be required to compensate Mr. C. Hefler, by reinstating his monthly compensation guarantee package."**

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 Claimant was an employee of the Gulf, Mobile and Ohio Railroad Company (GM&O) until its merger with the Illinois Central Railroad in 1972. Under provisions of the merger, he was guaranteed a salary based on 208.6 hours per month contingent upon his working on the highest level job available to him.

In March 1998, the Claimant was advised by his supervisor that his relief job in the IMX office would be abolished. Upon receipt of that advice, he requested a list of jobs from which he could select in order to protect his guaranteed salary. On March 3, 1998, the Manager Transportation Services mailed the Claimant a list of positions bulletined for 40 hours per week. The list included three Vacation Relief positions that would have protected the Claimant's lifetime guaranteed salary. Instead, the Claimant selected an Agent position.

By letter dated March 4, 1998, the Manager Transportation Services advised the Claimant that his guaranteed salary had been suspended due to his failure to select a Vacation Relief (VR) position. On March 5, 1998 he attempted to rescind his selection and choose another position; permission to rescind was denied.

The Claimant contends that the list of jobs mailed to him by the Carrier on March 3, 1998 failed to specify a position that he should have selected in order to protect his lifetime guaranteed salary. The Vacation Relief position existed for many years, he asserted, without the requirement that he displace on that position. He argues that the position was, after all, a five-day position, and that he had always been required to occupy a six-day position.

The Claimant is unsure of the amount of his claim or the method by which it should be computed. He requests the Board to award him either 34 months at \$700.00 per month (\$23,800.00) or 40 months (\$28,000.00).

The Carrier acknowledges that the Claimant became an employee with lifetime protected earnings as the result of the 1972 Merger Agreement between the Illinois Central Railroad and the Gulf, Mobile and Ohio Railroad Company. It adds that such lifetime salary guarantee was subject to the Claimant's protection of a position on his home zone with a rate equal to or greater than his guarantee. Until early 1998, all such positions were six-day positions. The Carrier points out that although six-day positions were abolished in early 1998, the Claimant was advised

by letter dated March 3, 1998, of positions that he would be required to protect in order to maintain his lifetime salary guarantee. For those reasons, the Carrier felt it had no alternative but to deduct the difference in earnings between the position the Claimant occupied and one he could have worked to preserve his lifetime salary guarantee.

The Organization filed several claims in connection with the Claimant's loss of lifetime salary guarantee. The Claimant asserted that the letter of March 3, 1998 and the list of jobs therein were confusing and misleading. In July and October 2000, the Organization and the Carrier reached a verbal understanding whereby the Carrier would bulletin two other Vacation Relief positions for the purpose of allowing the Claimant to re-establish his lifetime salary guarantee. The Claimant declined to bid on either Vacation Relief position and the Carrier continued to withhold the difference in earnings of the position held against his lifetime salary guarantee.

The Carrier argues that even though the Claimant offered no probative evidence of a Rule violation, the Board lacks jurisdiction to rule on this case. The Carrier asserts that such is true because the Claimant alleges a violation of the Merger Agreement. All cases involving such allegations, according to the Carrier, must be progressed to a Special Board of Adjustment. Because the Claimant advanced this dispute to the wrong tribunal, the Carrier considers this case procedurally defective.

The Board carefully analyzed the Submissions, exhibits and attachments, thereto, and assessed the arguments presented by both parties. In responding to the Carrier's allegation of procedural flaw because the dispute involves an alleged violation of the 1972 Merger Agreement, the Board concludes that the Carrier's assertion is correct as far as it goes. However, in the case before us, the Merger Agreement is inextricably intertwined with seniority, compensation, displacement, and other employee rights over which the Board does have jurisdiction. For that reason, the Carrier's allegation of fatal procedural error is rejected.

Regarding the Claimant's requirement to present probative evidence that the Carrier violated the Agreement when it deducted the difference in earnings between the position he worked and one he could have worked, the record clearly established

via letter of March 3, 1998 that the Claimant was timely advised of a list of positions from which he should have selected a Vacation Relief position in order to protect his lifetime guaranteed salary.

The March 3, 1998 letter reads, in pertinent part, as follows:

“. . . Listed below are all the positions in the New Orleans and Reserve, Louisiana Area, which are currently held by employees junior to you in seniority.

. . . In your letter you inquired specifically about positions that were available in order for you to maintain your six day guarantee. The list below contains three vacation relief positions. A vacation relief position would afford you the opportunity to relief on 6-day positions, therefore protecting your existing guarantee.

If you need further assistance, please advise.

<u>POSITION NUMBERS</u>			<u>INCUMBENT</u>
	*	*	*
171/VR			A. R. Richard
	*	*	*
171/VR			F. I. Luse
	*	*	*
171/VR			E. J. Livaccari”

As previously noted, the on-property record also shows that it was proposed by the Organization and accepted by the Carrier that other Vacation Relief positions would be created and offered to the Claimant in order to allow him the opportunity to re-establish his lifetime salary guarantee. He declined those opportunities on at least two occasions. The Carrier's action was, therefore, fully warranted.

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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 12th day of May 2004.