

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 37825
Docket No. MW-38490
06-3-04-3-463**

The Third Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(National Railroad Passenger Corporation (Amtrak)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed and refused to properly compensate Mr. M. Ayala at 100% of the applicable rate of pay as per the provisions of Rule 3 for his service beginning on December 11, 2002 and continuing through October 1, 2003 (Carrier's File BMW-493 NRP).**
- (2) As a consequence of the violations referred to in Part (1) above, Claimant M. Ayala shall now be compensated for "****the difference in pay between what he should have been paid and what he was actually paid for the time beginning December 11, 2002 until he was properly paid the 100% beginning on October 2003.****"**

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.

This claim involves the proper interpretation of Rule 3, Entry Rates, as it relates to the credit that should have been given to the Claimant for prior railroad service in calculating the appropriate level of compensation to be paid to the Claimant when he entered service. The following paragraph of Article 3 applies:

“(e) Employees who have had a previous employment relationship with a carrier in a craft represented by the organization signatory hereto and are subsequently hired by another carrier shall be covered by this Article, as amended. However, such employees will receive credit toward completion of the twenty-four (24) month period for any month in which compensated service was performed in such craft provided that such compensated service last occurred within one year from the date of subsequent employment.”

The relevant facts are undisputed. The Claimant began working for the Carrier on December 11, 2002. He had worked for the Indiana Harbor Belt Railroad (IHB) from March 1996 to September 2000, and for the Northern Indiana Commuter Transportation District (NICTD) from February 2001 through May 2002. Initially the Claimant was hired at the 90% entry rate for employees in their first 12 calendar months of employment, but after complaint and furnishing documentation of prior service, an adjustment was made by the Carrier to commence the 95% rate payable to employees in their second 12 calendar month period on January 24, 2003. The Claimant continued to receive the 95% rate until October 1, 2003, when he began receiving the 100% rate. The Claimant was advised in late March 2003 that it would not place him at the 100% rate at that time. The instant claim was filed on May 21, 2003 protesting the Carrier's failure to give the Claimant credit for his prior service and pay him the 100% rate from his initial date of hire. During the claim processing, the Carrier made clear that it gave credit to the Claimant for his prior 15 months of service with NICTD, but not IHB, and adjusted his pay to make a retroactive payment so that his record reflects that

he received 95% pay from his date of hire for the nine month period until October 2003. It is this nine month differential sought by the claim herein.

The Organization argues that Rule 3(e) is clear and unambiguous and requires the Carrier to give credit toward completion of the 24 month period for all of the Claimant's prior BMW railroad experience, including time he worked for the IHB as well as the NICTD, because his last compensated service (with NICTD) occurred within one year of his hire date with the Carrier. The Organization asserts that the entire justification for entry rates is training, and the parties negotiated and agreed in Rule 3 that 24 months of railroad service would be the benchmark for receiving 100% pay. It posits that under Rule 3 the Carrier is required to consider the entire railroad service record that an employee brings to the table if that employee begins service with the Carrier within one year from leaving the former employer. Because the Claimant had more than five years of prior service, the Organization argues that he was entitled to the 100% pay rate from his date of hire.

The Carrier contends that the Organization misinterpreted Rule 3 herein. It notes that Rule 3(e) relates to a previous employment relationship with "a [single] carrier" in a craft represented by the Organization, provided that such service last occurred within one year from the date of subsequent employment by another carrier. The Carrier argues that the Claimant is not entitled to credit for his time spent at IHB because his employment relationship with IHB did not occur within one year of his hire by Amtrak, there is no evidence that he was transferred from IHB to NICTD without any break in service, and credit was already given for the Claimant's prior employment relationship with NICTD which did occur within one year of his December 2002 hire date. It asserts that the Organization failed to sustain its burden of proving a violation of the Agreement under the facts of this case, citing Third Division Awards 26385, 29480, and 33621.

A careful review of the record convinces the Board that Rule 3(e) is neither clear nor unambiguous as asserted by the Organization. The Organization's interpretation would give credit for all years of prior service, however remote in time and irrespective of whether there have been different identity of prior employers or breaks in service between them, so long as some compensated service occurred within the year preceding the new hire date of the employee. The

rationale is that the Carrier is compensating for prior railroad experience, whenever it was acquired, because the employee is not really a new employee who requires substantial training. On the other hand, the Carrier points to the language in the first sentence of Rule 3(e) as limiting prior service consideration to one employment relationship with one carrier, and further reads the requirement in the second sentence to be that "such" compensated service have been performed within one year from its date of hire. Under such rationale, the Carrier gave credit to the Claimant for his time spent at NICTD but not at IHB.

It is the Organization's burden to prove that the Carrier violated Rule 3(e) in this case by only crediting the Claimant with his NICTD prior service, which had last been performed within one year of his December 2002 hire date, but not his IHB prior service, which was last performed more than two years prior to his December 2002 hire date. The Board is of the opinion that the Organization failed to sustain its burden of showing that its interpretation of Rule 3(e) is the only correct one and that the Carrier's reading of the Rule is neither reasonable nor supported by its terms. No precedent was furnished to support the Organization's interpretation of Rule 3(e). The Carrier clearly understood that Rule 3(e) gives credit for the entire length of continuous service with the prior carrier so long as it was last performed within one year from the Claimant's hire date by crediting the Claimant with 15 months prior service. In the absence of showing that the Claimant was transferred from IHB to NICTD without a break in service under a transaction constituting continuous employment for the same employer, facts which do not exist in this case, or that the parties intended prior non-continuous service for a different employer to be counted no matter how remote in time, the claim for additional compensation under Rule 3(e) must be denied.

AWARD

Claim denied.

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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 21st day of June 2006.