

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 39376
Docket No. CL-39753
08-3-NRAB-00003-060558
(06-3-558)

The Third Division consisted of the regular members and in addition Referee Steven M. Bierig when award was rendered.

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

STATEMENT OF CLAIM:

“Claim of the General Committee that (GL-13157):

- (1) The Carrier violated Article IV – GRADED CLASSIFICATIONS of the September 6, 1991 Agreement and possible other rules of the Agreement, when on or about August 1, 2003 it reduced his pay rate from Grade 12A to Grade 12B.**
- (2) The Carrier shall now be immediately required to compensate Claimant the difference in the pay rates which is \$1.63 per hour or \$13.04 per day for each day his pay was reduced from August 1, 2003 to the settlement of this claim and he is returned to Grade 12A.”**

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 facts of the instant case do not appear to be in dispute. Claimant R. Barnett entered the service of the Carrier as a Red Cap/Baggageman on April 1, 1993. At the time that this dispute arose, the Claimant was assigned as a Baggageman at Jackson, Mississippi. On July 25, 2003, the Carrier advised the Claimant that it had determined that he was one of a group of overpaid employees and his rate would be adjusted effective August 1, 2003. The Carrier indicated that it would not recover overpayments that he had received. On September 29, 2003, the Organization filed a claim on behalf of the Claimant requesting that he be returned to the Grade 12A position rather than Grade 12B. The Station Manager failed to respond to the claim. The first response to the claim occurred on March 19, 2004 by letter from Labor Relations Manager B. Blair.

The Organization contends that the Carrier violated the Agreement when it did not respond to the claim in a timely manner. According to the Organization, even though this dispute involves a time limit violation, the Board should sustain the claim on its merits. According to the Organization, it presented prima facie evidence and argument on the property that was unrebutted by the Carrier. According to the Organization, because the claim was not addressed in a timely fashion, it should be "allowed as presented." As a remedy, the Organization requests that the Claimant receive the difference between Pay Grade 12A and 12B for the period of August 1, 2003 until the present.

Conversely, the Carrier contends that it acted properly in rectifying the Claimant's incorrect rate of pay. The Carrier contends that the burden in such a case is on the Organization to prove that the Carrier violated the Agreement; it has not been able to do so. The Carrier contends that it did not act inappropriately when it reduced the Claimant's pay and asks that the claim be denied in its entirety.

After a review of the evidence and positions of the parties, the Board finds that the Organization has been able to meet its burden of proof regarding the Carrier's failure to respond to the claim in a timely manner. While the Carrier does have the right to correct an employee's erroneous rate of pay, it was required to respond to the Organization within 60 days of the filing of the claim. The response was untimely. Therefore, as a remedy, the Carrier will compensate the Claimant for the difference between Pay Grade 12A and Pay Grade 12B for the period

between September 29, 2003 and March 19, 2004. The compensation amount is \$2,164.64. The claim is sustained in accordance with the findings.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 8th day of December 2008.