Award No. 18659
Docket No. CL-18863

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert A. Franden, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES

PENN CENTRAL TRANSPORTATION COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6808) that:

1. Carrier violated the terms of the Agreement between the parties when it established an erroneous protected or guaranteed rate for Joseph T. Noto which was lower than the normal rate of compensation for regularly assigned position No. 1220; and,

2. Carrier shall now be required to establish and apply the rate of position No. 1220 as of May 20, 1964, as the proper protected or guaranteed rate for Joseph T. Noto and compensate him accordingly from May 20, 1964, and continuing thereafter.

EMPLOYES' STATEMENT OF FACTS: The facts involved in this case are not in dispute, as is evidenced by the General Chairman's letter of June 25, 1969 (Employes' Exhibit No. 1) to the Director of Labor Relations setting forth the facts as found by the Committee, and the Director of Labor Relations' letter of October 21, 1969, to the General Chairman (Employes' Exhibit No. 2) stating that "Our investigation has disclosed that the facts contained in your letter are correct as stated."

The Carrier and the Employes are in agreement that Mr. Noto is an employe entitled to preservation of employment under the terms of the Penn Central Merger Protective Agreements, and that his protected or guaranteed rate is established under the terms of Paragraph 3 of Appendix D to said Merger Agreement. (Employes' Exhibit No. 3.) While this Appendix D was modified to some extent by the Agreement of March 16, 1965 (Employes' Exhibit No. 4), it did not affect the status or protection due Mr. Noto.

There is no dispute regarding the following additional facts:

(1) Mr. Noto was the incumbent of Job 1220, Clerk in the Boston office of the Auditor of Freight Accounts on the controlling date.

(2) The advertised rate of pay for said Position 1220 was $498.35 at that time.

Jauary 17, 1969, the date the position was abolished. At that time Claimant became a "utility employe" (an employe who does not hold a regularly assigned position) and was thereafter compensated at his protected rate of $489.35 per month.

On August 18, 1969, Claimant was assigned to a regular position in the Revision Bureau at Boston at a rate of $643.38 per month, a rate higher than that of position, Symbol No. 1220, had it been in existence at that time. He continues to hold that regular assignment in the Revision Bureau.

By letter dated April 16, 1969, the Organization filed a claim in behalf of Claimant stating to the effect that he was entitled to protection at the full rate of position, Symbol 1220, and compensation at that rate beginning January 20, 1969. A copy of the letter of April 16, 1969, is attached as Exhibit "A." The claim was denied and by letter of June 25, 1969, the General Chairman progressed the claim to the Director-Labor Relations, the highest officer of the Carrier designated to handle such claims on the property. A copy of the General Chairman's letter is attached as Carrier's Exhibit "B."

In a letter dated October 21, 1969, the Director-Labor Relations denied that Claimant was entitled to the full rate of position, Symbol No. 1220. A copy of that letter is attached as Carrier's Exhibit "C."

The applicable Agreements involved in this dispute, copies of which are on file with your Board, are the Agreement between the New York Central Railroad Company and The Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, Effective September 1, 1922, as subsequently modified or revised on various dates; and the Agreement for Protection of Employes in Event of Merger of Pennsylvania and New York Central Railroads, effective January 1, 1964, executed by the Carriers and the various labor organizations, including the Clerks, on May 20, 1964.

(Exhibits not reproduced.)

OPINION OF BOARD: The question to be resolved in the instant case involves the interpretation of the wording "normal rate of compensation" in the Agreement for Protection of Employs in Event of Merger of Pennsylvania and New York Central Railroads executed May 20, 1964. The provision to be interpreted reads as follows:

> "Employes entitled to preservation of employment who, on the date the Protective Agreement is executed, hold regularly assigned positions shall not be placed in a worse position with respect to compensation than the normal rate of compensation for said regularly assigned position on the date said Agreement is executed, provided, however, that in addition thereto such compensation shall be adjusted to include general wage increases."

The question before this Board is whether a temporary "student" rate an employe is receiving on a position on the date of the Protective Agreement is the "normal rate of compensation for said regularly assigned position."

We are given a series of Awards from Special Board of Adjustment 605 wherein the question of regularly performed overtime was involved. In those

cases it was held that overtime which has become such an integral part of the position that it is paid whether or not the employe worked would be considered part of the "normal rate of compensation."

For our purposes the importance of those decisions is that they establish the precedent that the full bulletined rate of a position is not necessarily the "normal rate of compensation for said regularly assigned position." The standard applied in those cases of the rate of compensation regularly received as being the normal rate of compensation for said regularly assigned position is a fair and reasonable interpretation which we will follow. Accordingly, we hold that the rate the claimant was receiving on a regular basis on the date of the Agreement plus subsequent general wage increases is his protected rate. We will deny the claim.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 29th day of July 1971.

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