NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23266
Docket Number CL-23398

Carlton R. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes
(Houston Belt and Terminal Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9273) that:

1. Carrier violated the National Agreement dated January 13, 1979, between the parties when it failed and refused to properly apply the negotiated wage increases to the position of Chief Claim Clerk, occupied by Mrs. Evelyn Hartman.

2. Carrier shall now be required to properly apply all national wage increases to the position of Chief Claim Clerk as negotiated.

3. Carrier shall now be required to compensate Claimant Hartman for the difference in rate of pay allowed by Carrier and that to which entitled pursuant to the National Agreement dated January 13, 1979.

OPINION OF BOARD: Pursuant to an agreement dated April 4, 1973 between the District General Chairman and the President of the Carrier, the claimant was granted a $1.50 merit increase effective April 1, 1973. The operative paragraph of this letter provides as follows:

> "In above-mentioned conference, we agreed to a merit increase of $1.50 per day effective April 1, 1973 which will apply to Mrs. Hartman only, and should she vacate this assignment of Chief Claim Clerk, the rate will automatically drop back to the original rate set up in the agreement plus any future general adjustments in the meantime."

The Agreement was on the letterhead of the Organization signed by the District General Chairman, and the last paragraph provided as follows:

> "If the above is the correct understanding of our discussion, please advise by placing your signature in the space provided below, returning one copy for our file."

The signature of the President of the Carrier has been affixed to the letter. The question at issue is whether the $1.50 per day merit increase is subject to further increase whenever there is an increase in the rate of pay pursuant to the prevailing collective bargaining Agreement. The claimant contends that the intent was to increase the rate of pay by $1.50 and that any subsequent adjustments would affect the new rate of pay including the $1.50. The Carrier contends that the $1.50 is a fixed amount which is always paid in addition to the rate of pay which is separately adjusted as a result of wage increases.

There is some confusion in the pleadings because the Carrier indicates that for the balance of the contract which was in existence when this merit increase was awarded, that the $1.50 fixed amount was not included in the rate of pay and, therefore, not subject to the subsequent adjustments. On the other hand, the claimant claims that the $1.50 was made a part of the rate structure and thereafter all adjustments applied to the total rate including the $1.50.

We have concluded that the memorandum Agreement does not change the rate of pay and on its face does not support the claimant's position that the merit increase was other than a stipulated amount to be added to the otherwise-negotiated rate of pay.

The Organization asserts that if the intention was not to include the $1.50 figure as a part of the rate of pay, then the Carrier should have added an appropriate clause to spell out this condition. Inasmuch as the document was prepared by the Organization, the same argument could be made that if the $1.50 were to be made as an integral part and establish a new rate of pay, then appropriate language should have been included to insure that subsequent adjustments would affect the $1.50 merit increase as well as the balance of the current rate of pay.

We have reviewed the memorandum of the claimant as to the manner in which her salary was handled in three subsequent pay adjustments indicating that the $1.50 was, in fact, made a part of the rate and therefore increased in the subsequent adjustment. This raises the question as to whether a clerical mistake subsequently detected by an employe of the Carrier should forever bind the Carrier to an erroneous interpretation of an Agreement between the parties. There is no indication that this improper interpretation of the Agreement was known by the principals who negotiated the Agreement and under the circumstances, we do not agree that the clerical error should change the intent of the Agreement and bind the Carrier.

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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 15th day of April 1981.