

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25045
Docket Number CL-25234

Thomas F. Carey, Referee

PARTIES TO DISPUTE: (*(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(Northeast Illinois Regional Commuter Railroad Corporation*

STATEMENT OF CLAIM: *Claim of the System Committee of the Brotherhood (GL-9802)
that:*

1. *Carrier violated the Agreement Rules, particularly the February 7, 1965 National Mediation Agreement, when it failed to compensate P. M. Tolzmann \$32.42 which represents the difference in her guaranteed rate of pay and the amount earned by her during the month of December, 1981, and*

2. *Carrier shall be required to compensate Ms. Tolzmann \$32.42 for the month of December, 1981.*

OPINION OF BOARD: *According to the record the Claimant had secured her position with the Chicago and North Western Transportation Company which would act as agent and operator for the Regional Transportation Authority. This was achieved through a March 22, 1980 Memorandum between the Parties. Claimant was also a designated Protected Employee under the terms of the February 7, 1965 Employment Stabilization Agreement and, as such, had an adjusted protected rate of pay.*

The record clearly states that in the Memorandum of Agreement, Item I. provides that:

"Pursuant to 49 U.S.C. Section 11125 and Directed Service Order No. 1437 issued by the Interstate Commerce Commission on March 21, 1980, the Chicago and North Western Transportation Company as agent for the Northeast Illinois Regional Commuter Railroad Corporation and for the Regional Transportation Authority, Directed Service Carrier, shall hire the employees of the Chicago, Rock Island and Pacific Railroad to the extent that they are necessary to the operation of the Rock Island commuter service in Northeast Illinois and shall assume the existing employment obligation and practices of the Rock Island for those employees including agreements governing rates of pay, rules and working conditions, and employee protective conditions, for the period during which Directed Service Order No. 1437 is effective." (emphasis added)

Carrier's reliance upon Item 7 of the Memorandum of Agreement, that "The C&NW shall not be responsible to any employees of the Rock Island hired hereunder for any claims or debts due and owing to such individuals because of any employment, services performed, or obligations incurred on work done prior to the actual hiring of such individuals by the C&NW" is found to be misplaced. Item 7 does not supersede Carrier's obligation under Item 1 of the Agreement as previously cited. Item 7, applies only to work done prior to the actual hiring of workers to operate the commuter service.



The Claim is sustained.

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 violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 4th day of October 1984.