NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 26294
THIRD DIVISION Docket Number CL-26128

Irwin M. Liebermann, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employes
(
(Seaboard System Railroad

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood (GL-9946) that:

1. Carrier violated the Agreement in November 1983 and on a continuous basis thereafter, when it failed or refused to properly compensate Clerk D. L. Collins at the rate of pay established under Rule 27.

2. Carrier shall now compensate Clerk Collins the correct rate of pay on positions worked from October 26, 1982 and on a continuous basis thereafter."

OPINION OF BOARD: Claimant was employed by Carrier and began her training period in the Clerical Training School on October 26, 1981. On January 11, 1982, she performed her first compensated service in a regular position and based on this service she established her seniority on the date her training began, namely October 26, 1981. She was furloughed on February 19, 1982, and was recalled on November 7, 1983. After recall Claimant was compensated at 80% rate which triggered the dispute herein since Petitioner claimed that she was entitled to the 100% rate.

There were several changes in Article VIII of the 1979 National Agreement which impacted on this dispute. The original Article, in Section 1 provided that for the first twelve months of employment new employees shall be paid 85% of the applicable rates of pay. By Agreement reached on May 22, 1981, (effective June 1, 1981) the parties agreed to amend Rule 37, as follows:

> "(b) Clerical employees entering the service and establishing seniority on or after the effective date of this agreement will be compensated at the established rate of the position to which they are assigned or are filling during the periods set out below:
>
> | | Period Covered | Percentage Rate |
> |---|---|---|
> | 1. | During first 12 months of continuous service | 85% |
> | 2. | During the second 12 months of continuous service | 92% |

'NOTE: The foregoing provisions will be applied in the same manner as provided for in Article VIII of the BRAC National Agreement of January 30, 1979.'"

There were two other Agreements which have relevance to this matter. First, a Letter of Understanding dated November 10, 1981, which provided:

"This confirms our understanding that the provisions of Article VIII - Entry Rates of the January 30, 1979 National Agreement or local rules or practices pertaining to this subject shall continue to apply to employees covered by such rules hired before January 1, 1982.

Please indicate your concurrence by affixing your signature in the space provided below."

In addition the parties agreed to amend Rule 37, to become effective November 1, 1982, as follows:

"RULE 37 - ESTABLISHED RATES

(a) Rates of pay now in effect and established pursuant to agreements between the parties hereto shall continue in effect until changed as provided in existing wage agreements, by mutual agreement between parties signatory hereto or in accordance with the provision of the Railway Labor Act, as amended.

(b) Clerical employees entering the service and establishing seniority on or after the effective date of this agreement will be compensated at the established rate of the position to which they are assigned or are filling during the periods set out below:

Period Covered	Percentage Rate
1. During first 12 calendar months of continuous service	80%
2. During the second 12 calendar months of continuous service	90%

'NOTE: The foregoing provisions will be applied in the same manner as provided for in Article XI of the BRAC National Agreement of December 11, 1981.'"

It also should be noted that Article VIII, Section 1 (d) of the January 30, 1979, Agreement provides that:

"Any calendar month in which an employee does not render compensated service due to voluntary absence, suspension, or dismissal shall not count toward completion of the twelve (12) month period."

The Organization argues that Claimant was involuntarily furloughed and therefore the time furloughed should count in computing the 24 month period for compensation purposes. The Organization states that Claimant is entitled to the 85% rate through October 25, 1982, and the 92% rate from October 26, 1982, through October 25, 1983.

Carrier argues that Claimant was properly compensated and furthermore, furlough time does not constitute service under the Agreement and does not count towards completion of the twenty four month entry rate period. In support of its position Carrier relies in part on a letter from the then Director of Labor Relations distributed in conjunction with the May 22, 1981, Agreement. That Letter provided:

"Rule 2 -ESTABLISHED RATES

Old Rule 37 will appear as Rule 2 in the revised agreement. New paragraph (b) provides that employees entering the service on or after June 1, 1981 will be paid 85% of the established rate of the position to which assigned. After completing the first 12-month period, this employee will then be paid 92% of the established rate of the position to which assigned for the second 12-month period. (This provision is new).

Your attention is directed to the method used in the computation. The employee must have 12 months or 24 months of 'continuous service.' Any period during which the employee is suspended or furloughed will not count as continuous service. The employee must actually work 12 or 24 months. Arti-

> cle VIII of the BRAC National Agreement of January 30, 1979, provides that an employee with prior relationship in clerical ranks with the company who is rehired will be permitted to combine his service time. However, service in another craft shall not be used in determining the period of employment under this rule."

As the Board views it, there are two critical issues in this dispute: first, under which Agreement was Claimant covered and secondly, does the term "continuous service" embrace time on furlough.

With respect to the first issue, the language of the January 30, 1979, National Agreement is quite clear. That Agreement provides that the entry level rates specified will apply to all employes hired on or after February 14, 1979. Further, that Agreement was modified by the May 22, 1981, Agreement (quoted supra) which provided that the new rates would apply to Clerical employees entering service and establishing seniority on or after the effective date of that Agreement (June 1, 1981). Since Claimant herein was hired on October 26, 1981, and established that as her seniority date after completion of her training and began her compensated service in a regular position on January 11, 1982, she was covered by the May 22, 1981, Agreement. Thus Carrier was incorrect in asserting that the December 11, 1981 Agreement was controlling. In fact the language contained in Section 1 of the December 11, 1981, National Agreement supports this conclusion. That language provides that the new rates would apply to "Employees entering service on and after the effective date of this Article . . ." (January 1, 1982). Obviously Claimant had entered Carrier's service on October 26, 1981, long before that effective date.

With respect to the furlough time question, Carrier has supplied evidence that such time had not in the past been counted as a part of continuous service for purposes of computing entry level rates. Further, the parties agreed (in the November 10, 1981 Letter Agreement) that local Rules or practices would continue to apply for employees hired before January 1, 1982. In addition, the Board is constrained to note that Organization's construction of the Agreement with respect to the furlough time is neither logical nor reasonable. Based on the entire Agreement one must conclude that the parties never intended that continuous service embraced periods of furlough, even though involuntary. In this dispute Organization's position would be that the one month of compensated service and the subsequent nineteen months of furlough were sufficient to meet the criteria set forth with regard to entry level rates.

As we view it, such an interpretation is not reasonable since it would defeat the apparent intent of the entry level provisions. Such provisions are clearly designed to provide for reduced rates for newly hired employees commensurate with their experience.

Claimant shall be compensated at the 85% rate during her first twelve months of compensated service; furlough time will not be counted as part of "continuous service." She shall receive 92% for the second twelve month period.

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 in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 24th day of April 1987.