Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 28649
THIRD DIVISION Docket No. SG-27208
91-3-86-3-570

The Third Division consisted of the regular members and in addition Referee Martin F. Scheinman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Providence and Worcester Railroad Company

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Providence and Worchester Railroad Co. (P&W):

On behalf of John Giramma for the payment of the difference of his guaranteed annual wage he was receiving in June of 1985 and that which he was paid in July of 1985, account of Carrier violated Article 3:1, paragraph B of the June 12, 1974 Agreement, when it arbitrarly reduced his guaranteed annual wage from $31,500 to $25,000 or his weekly wage by $125.73 a week.

This claim to begin with the first pay period in July of 1985 and continue until this violation is corrected. The claim is to include all subsequent wage increases."

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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 waived right of appearance at hearing thereon.

On June 10, 1985, the Claimant was notified by Chief Engineer - Track & Structures that his annual wage of $31,500 would be reduced to $25,000. Carrier officials stated that this was being done in order to bring it in line with the annual wages of other Technicians who systematically perform skills comparable to those systematically performed by Claimant since January of 1984.

The Organization contends that such reduction in salary is not in accordance with provisions of the controlling Agreement. It asserts that Article 3:1, paragraph B is controlling this dispute. That Rule states:

> "After ninety (90) days of systematized utilization of a regular employee in a higher paid category of service than in which he was previously utilized, the regular employee must be certified by the P&W as competent for that category of service and shall thereafter be deemed promoted to that category for the purposes of this agreement, including seniority and basis for annual wage computation."

The Organization maintains that Claimant was promoted to the highest paid category of service during the years that he worked in the piggyback yard directing the work of other employees. It avers that when Carrier rearranged its work force, Claimant was assigned to work as a Track Technician and has performed those duties for three years prior to the filing of this Claim. In the Organization's view, there exists no reasonable explanation to support Carrier's determination to reduce Claimant's salary at this point in time.

It further agrees that Carrier has the right to assign an employee to any position, headquarters or type of work it requires. However, the Organization insists that Carrier does not have the right to reduce Claimant's salary because he is assigned a different task. In the Organization's view, an employee must be compensated in the highest paid category of service to which he has been promoted. Accordingly, it asks that the Claim be sustained.

Carrier, on the other hand, denies that it violated the Agreement. However, it also avers that the Claim be dismissed on procedural grounds since it was not appealed to the highest Carrier official authorized to handle claims and grievances. In Carrier's view, it was deprived of the opportunity to rescue the Claim or to fully prepare its arguments on property record.

As to the merits, Carrier maintains that Article 3:1(B), together with other relevant provisions of the Agreement, does not support the Organization's position. It argues that Articles 3:1(A), 3:1(B), 5:1, and 5:2 must be read together in order to ascertain the merits of this case. It asserts that the totality of the above-referenced Articles clearly reveals that a Technician is guaranteed an annual wage, not a wage which is permanently protected regardless of the performance of particular duties. It argues that when Carrier determines an individual technician's annual wage, the Agreement specifies that a review will take into account the highest skills he systematically used in a given calendar year. The annual wages of other technicians who systematically perform comparable skills would also be reviewed. Carrier insists that a combination of the above-stated criteria resulted in the reduction of Claimant's salary. It maintains that Claimant had ceased performing supervisory duties for at least seventeen months, that he performed lower level skills since his transfer, and that he was performing those lower level skills when the salary adjustment occurred. For those reasons, it asks that the Claim be denied in its entirety.

A careful review of the record evidence reveals that the procedural argument raised by the Carrier has no merit. The Agreement sets forth the grievance appeal process in claims, such as the one before us. According to the language, a conference will be held with an appointed officer of the Carrier and a representative of the Union. The language does not restrict Carrier as to the officer that responds; the denial from the Director of Labor Relations is a notification from the Carrier.

As to the merits of the Claim, we are convinced that the Claim must be sustained. The language in Article 3:1, paragraph B of the Agreement is clear and controlling. The Organization does not dispute the fact that Carrier's rearrangement of forces resulted in the assignment of Claimant to work as a Track Technician whereby he ceased performing his supervisory duties. However, Carrier cannot unilaterally determine, seventeen months later, that Claimant's annual wage should be reduced by $6,500. When Claimant was consistently compensated at the $31,500 rate for the extended period of time, he became entitled to the protection of Article 3:1, paragraph B of the Agreement.

It is a well established principle in the industry that a Carrier has the unrestricted right to direct its work force, unless Agreement language limits that right. In this instant dispute, such language does exist. Although Carrier may fail to assign Claimant supervisory duties in the current performance of his daily job assignments, he cannot be penalized for such choice as determined by Carrier. Claimant has been qualified in the past to perform such duties and is entitled to be compensated without a unilateral decision by Carrier to reduce that compensation.

For all of the above reasons, the Claim must be sustained in its entirety.

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 29th day of January 1991.

CARRIER MEMBERS' DISSENT
TO
Award 28649, Docket SG-27208
(Referee Scheinman)

This case turned on two major issues, and vigorous exception is taken to the Majority's decision on each. The first issue is whether the Organization followed the established on-property grievance handling procedure before going to the Board. The second is whether the Articles of the Agreement which discuss pay rate determinations allow an individual employee's pay rate to be reduced.

With respect to the procedural issue, the record clearly established that the Organization, by its own actions, recognized that the Vice President was the highest Carrier official appointed to handle claims and grievances. It was also established, and the Majority's decision confirms, that the Organization did not appeal this claim to the Vice President before progressing this dispute to the Board. To get around what normally is recognized as a fatal error to the Organization's case, the Majority accepted the totally unsupported statement in the Organization's rebuttal that, "it must be noted that the Agreement merely states that a conference will be held with an appointed officer of the P&W and a representative of the union." This assertion is not supported by either reference to specific Agreement language or by objective evidence of a controlling past practice.

With respect to the merits, the Majority's decision

quotes Article 3:1(B) in full, and this Article is the basis of their ruling on the merits. This Article must be considered with 3:1(A), and when it is, the proper interpretation of the Agreement is the Carrier's. Article 3:1(A) reads: "Regular employees will be entitled to a guaranteed annual wage computed with regard to the performance of the highest paid category of service they are systematically called upon to perform in a given calendar year without regard to the percentage of their hours devoted to that highest paid category of service." (Emphasis added.) The record shows, and the Majority agrees, that the Claimant had not performed any supervisory services since January of 1984. When Article 3:1(A) and 3:1(B) are considered together, the logical conclusion is that in 1985 it was proper to reduce Claimant's annual wage to reflect the highest paid category of service he had rendered in 1985. Articles 5:1 and 5:2 would have come into play if there were a dispute whether his reduced wage was inappropriate when compared to the annual wages of others doing similar work.

In summary, this decision is erroneous, based not upon fact, but upon unsupported assertions and, as a precedent, it's not.

Robert L Hicks
R. L. Hicks

P. V. Varga
P. V. Varga

M. W. Fingerhut
M. W. Fingerhut

James E. Yost
J. E. Yost

Michael C. Lesnik
M. C. Lesnik