

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31105
Docket No. CL-31270
95-3-93-3-416

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

(Transportation Communications
(International Union
PARTIES TO DISPUTE: (
(Bessemer and Lake Erie Railroad Company

STATEMENT OF CLAIM: "Claim of the System Committee of
the Union (GL-10966) that:

1. Carrier violated the effective agreement when it failed to allow Ms. B. A. Connolly the proper amount of lump sum payment as provided in Article I, Section 1, of an agreement of March 1, 1992.

2. Carrier shall now compensate Ms. Connolly the full amount (\$2,580) of said lump sum payment as it has done to other employees in like circumstances."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

During 1990, Claimant was assigned to a clerical position which she held until on or about October 1, 1990, at which time she was appointed to the "exempted" position of Secretary to Comptroller. She thus was credited with enough service under the Agreement to qualify for vacation in 1990, to be taken in 1991. On April 1, 1992, the Parties negotiated an agreement concerning lump sum payment of \$2000, plus a \$580 productivity bonus, to be paid to all eligible employees. Qualifications for the lump sum payment were based upon identical criteria set forth in Article I, Section 1, of a National Agreement of June 1, 1991, between this Organization and a number of carriers. Claimant did not, initially, meet the eligibility requirements.

Under a letter of Agreement dated January 10, 1992, subsequent to the National Agreement, however, the Parties to that Agreement extended the criteria for eligibility to include employees who qualified for vacation in 1990 for 1991. Under date of May 6, 1992, Carrier authorized payment of the lump sums and special payments to three other employees not then covered by the labor Agreement, but who were working as temporary management employees on days they would otherwise have worked as Clerks.

Carrier maintains that it authorized the lump sum payments to the three non-covered employees in order to avoid discouraging covered employees from taking temporary management position assignments when needed. The Organization does not contest that motive, but asserts that if Carrier includes some non-covered employees in its award of the lump sum payments, it must also include Claimant, particularly since she acquired eligibility for the payment under the amended criteria of the National Agreement, which took effect before the Parties in this case entered into their April 1, 1992 Agreement.

While making no judgment regarding the "voluntary" payment of lump sums to the three non-covered employees, the Board finds that, since the amended National Agreement predated the Agreement between the Parties in this case, Claimant is entitled to payment under that Agreement.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 1st day of September 1995.