Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 31897
Docket No. CL-31923
96-3-94-3-291

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(Illinois Central Railroad

STATEMENT OF CLAIM:

"Claim of the System Committee of the Organization (GL-11049) that:

(1) Carrier violated the Agreement dated January 5, 1993, beginning February 24, 1993, when it failed to properly compensate Clerk T. J. While, Decatur, Illinois.

(2) Carrier shall now be required to compensate Clerk T. J. While the difference between the rate of pay of the position he occupies and that of his protected rate of pay, a difference of $15.07, beginning February 24, 1993, and continuing each work day thereafter."

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 were given due notice of hearing thereon.

Involved herein is the National Salary Plan involving the Organization and various Carriers and the degree to which it applied at the time of this claim to this Carrier. Also involved is the fact that -- apart from the National Salary Plan -- the Claimant had been covered by protective conditions of the September 15, 1972 Merger Protective Agreement.

The Claimant's regular position at Gibson City, Illinois, was abolished on February 23, 1993. On the following day, he voluntarily displaced to a position at Decatur, Illinois, outside of his home zone. This position, under the National Salary Plan, was in Wage Grade 8, higher than the position which was abolished (Wage Grade 5). His seniority would have permitted him to displace on a Wage Grade 9 position in his home zone.

His merger protected rate had been $116.09, a wage level still higher than any of the National Salary Plan rates directly involved herein. Upon the Claimant's assumption of the position in Decatur, the Carrier ceased paying him the protected rate. It is this protected rate of $116.09 -- and only this rate -- which the claim seeks to have maintained for the Claimant. Thus, applicability of the National Salary Plan rates is not before the Board.

As pointed out by the Carrier, the proper forum for resolution of disputes as to protected rates is fully provided in Section 14 of the Merger Protection Agreement. Thus, the matter here under review is not within the jurisdiction of this Board.

Nevertheless, two documents cited by the Organization require brief discussion.

The parties reached an Agreement on January 5, 1993, which reads in pertinent part as follows:

"In regard to the National Salary Plan the following will apply:

1. Employees will not have an obligation to bid to higher rate positions to protect their employee maintenance rates (EMR) so long as they continue to occupy the positions they held on January 5, 1993.

2. Employees voluntarily moving to higher or equal rate positions from their January 5, 1993, positions (or subsequent higher rated

positions) will not have an obligation to bid to future higher rated positions to protect their EMR's provided that they have not had their EMR's adjusted or suspended as a result of an earlier event."

Regardless of what import this may have as to the Claimant's employee maintenance rate, there is no reference whatsoever to the terms of maintaining a rate established under the Merger Protection Agreement. It is solely the merger protected rate which the claim seeks for the Claimant.

By letter dated March 1, 1993, the Vice President Human Relations and the General Chairman agreed as follows:

"Employees will not have an obligation to displace to higher wage grade positions to protect their employee maintenance rate (EMR) or protected rates (merger and '81), so long as they continue to occupy a position in the same wage grade as they previously held.

An employee who voluntarily displaces to a lower wage grade when one is available to him in the same or higher wage grade, will have the difference in rate offset against the employee's EMR." (Emphasis added)

This letter does refer to "protected rates." The first paragraph, however, concerns employees "who continue to occupy a position in the same wage grade;" the second paragraph concerns voluntary displacement to a lower wage grade. Neither circumstance is applicable to the Claimant herein. More significantly, however, this letter is dated March 1, 1993, after the Claimant's move to the Decatur position. Thus, no matter how interpreted, it cannot retroactively apply to the Claimant's action on February 24, 1993.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 4th day of March 1997.