

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32026
Docket No. CL-32578
97-3-95-3-505**

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: (
(National Railroad Passenger Corporation (AMTRAK)**

STATEMENT OF CLAIM:

"Claim of the System Committee of the Organization (GL-11171) that:

**The following grievance is hereby presented to the Company in
behalf of Alese E. Schwoyer:**

(a) Ms. Schwoyer was hired to the Corporation by letter from Audrey R. Weaver, Associate Human Resources Representative, dated February 3, 1994. This letter told Ms. Schwoyer that she was to begin work on February 7, 1994 and that her rate of pay would be \$14.43 per hour. Ms. Schwoyer has only been paid \$10.82 per hour for hours worked.

(b) That Ms. Schwoyer now be paid the difference (\$3.61 per hour) between the rate of pay which she has been paid and the rate of pay at which she was hired for every hour she has worked since February 7, 1994 or at least for every hour since March 29, 1994, which is sixty days from the date of this grievance, and continuing until this grievance is settled.

(c) This grievance is being presented in accordance with Rule 25 of the Corporate Agreement and should be allowed."

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.

Claimant was previously employed by CSX Transportation Company for approximately 25 years. Her service ended on December 31, 1992 through a separation allowance offer made to her by CSX.

Claimant entered Carrier's service as a Secretary I on February 7, 1994. On February 3, 1994, Carrier's Human Resources Department confirmed its offer of employment and advised her that her rate of pay would be \$14.43 per hour. On or about February 18, 1994, the Human Resources Department determined that she was not entitled to the full rate as erroneously set forth in the February 7, 1994, letter. Her hourly rate was then adjusted to the 75% entry rate provided by the entry rate rule (Rule 11 and Article VII) of the Agreement. Those provisions read in pertinent part as follows:

"RULE 11 - WAGES

(f) (viii) Employees who have had a previous employment relationship with a carrier in a craft represented by TCU and are subsequently hired by Amtrak shall be covered by this section 2, as amended. However, such employees will receive credit toward completion of the sixty (60) month period for any month in which compensated service was performed in such craft provided that such compensated service last occurred within one year from the date of subsequent employment.

* * *

ARTICLE VII -- Entry Rates (September 6, 1991, Mediation Agreement)

The entry rate provisions of existing agreements are modified: effective January 1, 1992.

- (a) to credit Amtrak service for entry rate purposes, and
- (b) to allow Amtrak to waive entry rates for specific positions under the following conditions:
 - (1) all employees hired prior to such waiver and holding the same positions at the same location who would be receiving a lower rate of pay will have their rates adjusted to the rates of the employee whose rate is waived.
 - (2) the waiver will apply only as long as the employee remains on the position for which waived.
 - (3) the entry rate period will remain unchanged.
 - (4) the General Chairman must be notified in advance of any such waiver and the names of employees that will be impacted.

NOTE: The entry rate provisions in the article will supersede those in existing agreements where they are in conflict."

By letter of May 26, 1994, the Organization filed a claim on Claimant's behalf, contending that Claimant should be compensated the difference (\$3.61) between the 75% entry rate and the full rate for her position. This claim was denied on July 18, 1994. In its denial, the Carrier maintained that Claimant's original confirmation letter was in error. Carrier further stated that the Claimant had not performed compensated service as a TCU employee with another railroad within one year prior to the date she began working for Carrier. Accordingly, her correct rate of pay was at the contractual 75% entry rate. The denial was subsequently appealed and progressed up to and including the highest Carrier officer designated to handle such matters.

The Organization, in its Submission to the Board included a copy of the resignation agreement signed by Claimant and CSX. If offered that document as proof that Claimant remained an employee of CSX through December 31, 1993. Thus, according to the Organization, the Claimant was entitled to full pay upon her employment with Amtrak. The Carrier has protested inclusion of that agreement in the case before this Board. In point of fact, even if the resignation agreement were considered by the Board, when read in full, it establishes that Claimant would be considered as an employee through December 31, 1992, for vacation pay purposes only, but

"Effective December 31, 1992, [such employees] will no longer be an employee of the Carrier and will receive payment for any earned and/or unused vacation to which entitled and any accumulated unused sick pay at 50% of the rate of the last position occupied, or their protected rate whichever is higher." (Emphasis added)

Thus, even with the resignation agreement, which the Board cannot and will not consider in this case, the only issue before it is whether Carrier is bound by the letter from a misinformed Human Resources Department employee.

Under the provisions of the Agreement, since Claimant, for a period of more than a year before her employment by Amtrak, did not render any compensable service at CSX, she is entitled only to the 75% entry rate for her position. Claimant may not benefit via a "windfall gain" from a Carrier employee's error regarding her contractual rights. Nor would she, in other circumstances be compelled to sustain a "windfall loss" from such an error had she been erroneously under-compensated (Third Division Awards 18064 and 29665).

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 6th day of May 1997.