Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 33167
Docket No. MS-34352
99-3-97-3-926

The Third Division consisted of the regular members and in addition Referee Robert Perkovich when award was rendered.

(Thomas O. Coyan
PARTIES TO DISPUTE: (
(Grand Trunk Western Railroad Incorporated

STATEMENT OF CLAIM:

"Claim on behalf of Mr. T.O. Coyan of the Brotherhood of Railroad Signalmen on the Grand Trunk Western Railroad:

Claim on behalf of Mr. T.O. Coyan (hereinafter referred to as claimant) Signal Maintainer of the Brotherhood of Railroad Signalmen that:

a.) Carrier violated the current Signalmen's Agreement, as amended, particularly Addendum 13, Article IV, Section 2 (Compensation Due Protected Employees) when it failed to pay claimant compensation in accordance with his Test Period Average (TPA).

b.) Carrier now be required to compensate claimant as follows:

January 1996:	223.78
February 1996:	297.88
March 1996:	547.48
April 1996:	235.48
May 1996:	141.88
June 1996:	477.28
July 1996:	63.88
August 1996:	391.48
September 1996:	356.38
October 1996:	-60.92
November 1996:	606.28
Total Compensation:	3,280.88

Carrier's file 8390-1-104. General Chairman's file: 97-03-GTW."

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.

Following the Carrier's acquisition of several other entities, the Carrier and the Brotherhood of Railroad Signalmen ("Organization") negotiated a single working Agreement to govern their collective bargaining relationship. In so doing the parties agreed that employees in active service as of November 30, 1992 with more than ten years of employment would be retained and would be paid a protected rate of pay of $15.70 per hour as of November 20, 1996. Claimant, as a former employee of one of the entities acquired by the Carrier, was among those employees covered by this provision.

On or about January 2, 1996 the Claimant was transferred to a Signal Maintainer position in Pontiac, Michigan, a point on the Grand Trunk Western seniority district. Upon his transfer he was paid, however, at the hourly rate of $15.60 per hour, the same rate paid to Signal Maintainers originally employed by the Carrier. The Claimant then filed the instant claim contending that he should be paid at a different rate, his Test Period Average. During the claim handling on the property, the Carrier contested the claim, but ascertained that the Claimant should have been paid, pursuant to the single working Agreement described above, his protected rate of $15.70 per hour, and assured the Claimant and the Organization that he would be reimbursed for the shortfall and paid at that rate thereafter. Subsequently, the Claimant pursued his claim before the Board seeking payment in accordance with his Test Period Average.

The record clearly reflects that the Claimant's rate of pay is governed by Article IV, Section 2 of the single working Agreement negotiated between the Carrier and the

Organization. In that Agreement the parties set forth that the rate of compensation for protected employees shall be based on a formula using as a base period ". . . the last twelve months in which (the employee) performed compensated service immediately preceding the date of this agreement." Thus, the governing Agreement makes no reference to a Test Period Average as the basis for the agreed-upon rate of compensation, unlike Agreements that preceded it. In the Claimant's case, that rate of pay was $15.70 per hour for the relevant point in time. Accordingly, the claim for compensation based on a Test Period Average is denied.

The record reflects, however, that for some period the Claimant was erroneously paid at a different rate, i.e., $15.60 and the Carrier concedes that point. The record is unclear, however, whether the Claimant has been made whole for the period of time during which he was compensated at $15.60 per hour as opposed to $15.70 per hour. Thus, to the extent that there may be any confusion on this point, and because the Carrier concedes its liability for the difference between those two rates, the Carrier is reminded to ensure that the Claimant has been so compensated, (as it assured the Claimant and the Organization) if he has not already received the amount in question.

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 25th day of March 1999.