

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35750
Docket No. CL-36321
01-3-00-3-553**

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

PARTIES TO DISPUTE: (
(Transportation Communications International Union
(National Railroad Passenger Corporation (Amtrak)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-12634) that:

The following claim is hereby presented to the Carrier on behalf of Claimant Michelle Fluty:

- (a) The Carrier violated the Clerks' Rules Agreement effective July 21, 1972, as revised, particularly Rule 11 and other rules, as well as Articles IV and VII of the September 6, 1991, Mediation Agreement, when they waived the entry rate for various clerical employees, including Brian Jeffers, while they occupied position(s) located in the Commissary Department, Rensselaer, NY, and refused to waive the entry rate for Claimant Fluty, during the period that she has worked in the department, as a lead TPMS clerk;**
- (b) The Carrier should now waive Claimant Fluty's entry rate and compensate her at the full 100% rate (currently \$130.88 + \$4.00 differential per day) for her lead TPMS clerk assignment, eight (8) hours per day, as well as any overtime earned, commencing sixty (60) days retroactive from the date of this claim and continuing for each and every work day thereafter, on account of this violation;**
- (c) The Carrier should also comply with all of the conditions and requirements of Article VII, including allowing the waiver of the entry rate to continue so long as Claimant Fluty remains on the**

position. Also, the General Chairman be notified of all such waivers and the names of the employees that will be impacted;

- (d) This is not the first time the Carrier has handled the payment of wages between the male and female gender employees in a different manner, as charged above. Therefore, the Carrier in doing so, is likely in violation of various E.E.O. laws, regulations, and/or policies involving this subject matter;
- (e) This claim has been presented in accordance with Rule 25 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.

On April 26, 1999, the Organization filed claim on behalf of the Claimant, Michelle Fluty, arguing that the Carrier violated the Clerks' Rules Agreement, particularly Rule 11 and other Rules, as well as Articles IV and VII of the September 1991 Mediation Agreement, when the Carrier waived the entry rate for various clerical employees, including one Brian Jeffers, while they occupied positions located in the Commissary Department, Rensselaer, New York, and refused to waive the entry rate for the Claimant during the period she worked in the department as a lead TPMS Clerk. The Organization argues that the Claimant's entry rate should be waived and she should be compensated at the full rate eight hours per day, as well as any overtime earned, commencing 60 days retroactive from the date of the claim and continuing for each and every work day thereafter until the claim is settled. The Carrier denied the claim.

The Organization asserts that this grievance involves the inconsistency in which the Carrier applies entry rates to certain employees and not in uniform manner. The Organization maintains that the parties have argued with each other concerning this inconsistency for many years and finally filed this claim, with limited retroactivity, to put an end to the Carrier's inconsistent application of the Rules and Agreements. The Organization argues that its claim is not procedurally defective as the claim was filed for dates only within a 60-day period retroactive from the date it was filed, which is proper and in accordance with Rule 25. The Organization contends that at no time does its claim attempt to recover any compensation prior to the 60-day period prior to this claim. The Organization maintains that its pointing out that the Carrier waived the entry rate for Jeffers was for the purpose of demonstrating that the Carrier has, in fact, waived the entry rates for other employees. The Organization also disputes the Carrier's contention that the Carrier has waived entry rates for employees with the full concurrence of the Organization. The Organization does agree that the Agreement allows for the Carrier to waive the entry rate for employees, however argues that the Carrier failed to acknowledge the requirements that the Carrier must comply with when doing so. The Organization points out that the waiver of entry rates must apply to all employees in the category and at the location, and notification must be provided to the Organization. The Organization argues that complaints have been made in regards to the Carrier's pattern of handling the wages for male and female employees differently and that the Carrier is obligated to conduct a fair investigation of the complaints and fully disclose the findings to the interested parties and take corrective action when appropriate.

The Carrier argues that no specific portions of any of the Rules the Organization claims the Carrier violated have been cited nor have any facts, arguments, or evidence been presented to demonstrate just how the parties' Agreement has been violated. The Carrier contends that the Agreement provides for waiving entry rates for employees and that the Organization has concurred with this. The Carrier argues that its investigation into the matter revealed that the Claimant was paid at the correct level of \$13.91 per hour plus \$4.00 per day differential, which is at the 85 percent rate and in direct compliance with Rule 11 and Articles IV and VII of the September 1991 Agreement. The Carrier further argues that all other clerical employees, both male and female, working in the capacity of lead TPMS Clerk were also paid at the correct levels. The Carrier further points out that the Organization's reference to entry level rates for TPMS Clerk Brian Jeffers is not applicable to the Claimant's position because Jeffers was a TPMS Clerk several years ago, approximately ten years, under a different

management staff. The Carrier maintains that under the current staff, no entry levels have been waived under any clerical position in the customer services department, which includes the entire time that the Claimant was employed. The Carrier points out that the Organization is basing its claim on an alleged violation that happened several years ago, making the claim untimely and rendering it defective under Rule 25(a). The Carrier also claims that the Organization's assertion that the Carrier handles the wages of its male and female employees differently or in any manner contrary to the Agreement is, in fact, a mere assertion and does not constitute any basis of fact. The Carrier contends that it was in direct compliance with the current Agreement as well as all regulations referred to by the Organization.

The parties being unable to resolve the issues at hand, this matter came before the Board.

The Board has reviewed the record in this case, and we find that the Organization has failed to meet its burden of proof that the Carrier violated the Agreement by failing to properly compensate the Claimant. The Carrier is correct that the Organization has failed to cite sufficient authority to support its allegations that a violation of the Agreement occurred in this case.

The language of Rule 11 requires the Carrier to pay employees various wages on a daily basis. In 1991, modifications allowed the Carrier to waive entry rates for certain employees in certain categories and adjust the rates of other employees who were at the same location at the same time holding the same positions. In this case, there was only one employee named as being the recipient of the waived entry rate. However, that waiver allegedly occurred in 1991 and 1992. The Claimant in this case began her employment six years later.

In this dispute, the Organization has contended that the Claimant was entitled to a waiver of her entry rates. However, there is insufficient proof or authority to support the Organization's position.

Because the Claimant did not work there until six years after the person with the adjusted rate, this claim must be denied.

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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 24th day of October, 2001.