Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 38382
Docket No. CL-39385
08-3-NRAB-00003-060053
(06-3-53)

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

PARTIES TO DISPUTE: (Transportation Communications International Union
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(CSX Transportation, Inc.

STATEMENT OF CLAIM:

"Claim of the System Committee of the TCU (GL-13116) that:

(a) Carrier violated the terms and conditions of Article IV-Direct Train Control of the 1986 National Clerical Agreement when by letter dated April 5, 2004, it arbitrarily recalculated and reduced the April 1, 1999, monthly test period average of Claimant H. L. Crymes from $7,505.08 (360.33 hours) to $5,394.41 (259 hours) and;

(b) The Carrier shall now be required to reinstate Claimant Crymes' test period average as calculated in 1999 with all subsequent general wage increases and cost-of-living allowances and make him whole for any and all lost benefits as provided by Article IV-Direct Train Control."

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.

This dispute arises from a letter of April 5, 2004 that the Guarantee Administration Department addressed to the Claimant, advising that a recent audit of its records revealed that an error was made in the calculation of the Claimant's New York Dock type protection test period average as provided the Claimant by letter of October 15, 1999.

The April 5, 2004 letter stated that the test period average was erroneously calculated to be $7,049.50, 360.33 hours per month (effective April 1, 1999) instead of $5,394.41, 259 hours per month. The letter said that the Carrier was thus adjusting the Claimant's test period average effective March 1, 2003 to $6,171.06 per month (including subsequent general wage increases and COLAs). The letter further advised a net overpayment of $25,809.60 retroactive to March 1, 2003, would be recovered through a deduction from Claimant's earnings of $100 per pay period until full recovery.

The aforementioned letter of October 15, 1999 from the then Director Labor Relations to the Claimant notifying him of his protective allowance as then calculated reads as follows:

> "This refers to the closing of the 75th Street Tower at Chicago, IL on March 17, 1999.
>
> It has been determined that you are entitled to the protective conditions set forth below. Accordingly, please indicate by checking on the appropriate line which protective conditions you desire to receive, returning one signed copy to Mr. J. T. Keyser, Manager, J-679, 6735 Southpoint Drive South, Jacksonville, Florida 32216-6177 within fifteen days of receipt of this letter. (In the event you fail to make an election, it will be deemed that you will continue under your current protection.)

Your protective entitlements, as of July 1, 1999, are:

_____ Current Protection: Job Stabilization -- $146.04

_____ DTC (NY Dock type protection): $7,505.08 Expires – 2/28/05
360.33 HRS"

The record reveals that the Claimant checked the last line as the type of protection selected, i.e., $7,505.08.

Although the record contains argument of the parties relative to various Rules of Agreement and terms of the protective conditions, the Board will not address those aspects of the dispute because it finds reason to conclude that the actions of the Carrier were not procedurally taken within a reasonable time period.

In arriving at this decision the Board finds noteworthy a September 5, 1997 Award of an Arbitration Committee (Referee David P. Twomey) in a New York Dock dispute between the Carrier and the United Transportation Union. In part here pertinent that decision reads as follows:

> "We have considered all of the arbitration awards cited by the parties including those dealing with carrier's right to recoup money from employees in clear situations of overpayments to those dealing with the requirement that the carriers must establish reasonable procedures for the detection and correction of payroll errors within a reasonable time after an occurrence. The Carrier asserts that because it took two years to discover the overpayments does not indicate that the Carrier itself was negligent, or that the two employees should be unjustly enriched at the expense of the Carrier. In fact the constructive code used by the Carrier to identify the transaction was incorrectly programmed. No Carrier payroll employee reviewed the initial claims of the two employees to see if the employees correctly understood their entitlements under New York Dock Conditions. Indeed not a single claim was researched and validated by a payroll expert for nearly two years. Such is simply not right, and the assertion of a computer glitch cannot relieve the Carrier of its responsibility to establish reasonable

procedures (including backup procedures) for the timely detection and correction of payroll errors.

Where there is no specifically agreed upon time limit with respect to the matters now before this board, the board must apply a reasonable time limitation period in the context of the narrow facts and circumstances of this particular record. . . ."

Clearly, the above referenced 1997 Award placed the Carrier on notice that it had a responsibility to establish reasonable procedures for the timely detection and correction of payroll errors involving protective conditions. Notwithstanding that this admonition by the Arbitration Committee involved a two-year period of time that it took the Carrier to detect a payroll error, the Carrier detection of the alleged error in the instant case comes four years after the job protection allowance was granted to the Claimant.

The Board also finds it noteworthy that the situation in the above mentioned arbitration Award was said to have involved a circumstance wherein the employees had computed their protective allowance entitlements without review by the Carrier's Payroll Department. In the case now before the Board, it was not the Claimant who computed his protective allowance in 1999, but rather the Carrier. Moreover, it is not contended that the signatory to the October 15, 1999 letter, the then Director of Labor Relations, or the Manager who was designated to handle return of the letter once the Claimant indicated his choice of the two calculated options, were not the proper officials of the Carrier authorized to put their protective allowance determinations into effect. In this same respect, the Board finds it difficult to comprehend that these Carrier officials did not have full knowledge of the Rules and compensation that governed the calculation of test period earnings for the Claimant.

In the circumstances, without passing judgment on the merits of argument as to whether or not Agreement Rules and protective provisions support an error having been made in the calculation of the Claimant's test period average, we conclude that the record establishes that the Carrier failed in its responsibility to have detected and corrected any alleged error in the job protection allowance at issue within a reasonable time period. It is, therefore, the decision of the Board that the Claimant is to be made whole.

AWARD

Claim sustained in accordance with the Findings.

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 21st day of December 2007.