

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40592
Docket No. CL-40428
10-3-NRAB-00003-080133**

The Third Division consisted of the regular members and in addition Referee Steven M. Bierig 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-13192)
that:**

- (1) The Carrier violated the Amtrak (NRPC)-T.C.U. (NEC) Clerks Rules Agreement beginning on August 1, 2003, particularly rules: 1(h), 2-A-1 (a/b/c), 3-C1(a) 1,2(par c), 4-E-1, 4-F-1, 4-F-2, 4-F-3, 5-C-1, 25 of the Corporate Mediation Agreement, Appendix E- Articles 1, 4(a), 12(b,g), 15(a), Appendix H Articles (1-b), Article IV), Article IX, Mediation Agreement of Sept 1991– Article IV- Graded Classifications, and other rules, when it failed to seek a written agreement from the Organization’s General Chairman to make an exception to the current rules agreement, then reduced the guaranteed hourly rate of pay for employees holding regularly assigned positions of Baggage man, Lead Baggage man, and Baggage man/Redcap, and Accounting Clerk/Baggage man all (located in Grade 12A) and began paying the effected employees at a lower hourly rate of pay in Grade 12(B) known as Baggage man/Mail Clerk, did not allow the affected employees to displace from the positions that the Carrier had advertised at the Grade 12(A) some 12 years ago, and did not abolish the effected positions and re bulletin the new positions showing the correct Job Titles, Job Descriptions and new hourly rate of pay that the affected employees would be receiving**

hourly. Instead, the Carrier simply reduced the hourly rate of pay.

- (2) Claimants M. Miller, R. Brown, T. Arter, I. Humbert, C. Kyler, S. Mark, D. Horton, J. Garcia, N. Cohen, C. Cassanova, B. Hidalgo, now be paid eight (8) hours at Grade 12(A) for each and every day plus the differential of \$4.00 for any assignment that may cover positions of Lead Baggage man until such violations ceases."

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.

The basic facts of the instant case do not appear to be in dispute. Claimants M. Miller, R. Brown, T. Arter, I. Humbert, C. Kyler, S. Mark, D. Horton, J. Garcia, N. Cohen, C. Cassanova and B. Hidalgo hold positions in the Mail, Baggage, & Express Department at Penn Station in New York. Each Claimant holds a seniority date after October 1, 1991 and each holds a title to some form of Baggage man/Mail Clerk Position.

At Penn Station, the Carrier incorrectly bulletined certain positions and paid employees in those positions at the 12(A) pay grade for approximately 12 years. Said positions include: Baggage man, Lead Baggage man, Baggage man/Redcap, and Accounting Clerk/Baggage man. The Claimants should have been paid at the 12(B)

pay grade per the express agreement of the parties under the terms of the September 6, 1991 Mediation Agreement.

By letter dated July 15, 2003, the Carrier advised the affected employees of the mistake, and the Carrier's intent to adjust the employees' rates of pay to reflect the correct rate of pay beginning August 1, 2003. Pursuant to this notice, the Organization filed the instant claim indicating that the Carrier did not have the right to reduce the pay of the Claimants and requesting that the Claimants be paid eight hours at Grade 12(A) for each and every day plus the differential of \$4.00 per day for any assignment that may cover positions of Lead Baggagehandler until such violation ceases.

The Organization contends that the Carrier violated the Agreement when it reduced the compensation of the Claimants. The Claimants had received the 12(A) rate of pay for a period of 12 years and had come to rely upon that rate of pay. The Organization claims that the Claimants relied to their detriment on the higher rate of pay and that they should continue to receive that rate of pay, or in the alternative, be granted displacement rights. As a remedy, the Organization requests that Claimants' 12(A) rate of pay be reinstated and that the Claimants be made whole.

Conversely, the Carrier contends that it acted properly in reducing the rate of pay for the Claimants when it discovered the long-standing error. The Carrier contends that the plain language of the Agreement provides that Claimants should have received the 12(B) rate of pay for the entire 12-year period in question. In addition, the Carrier stresses that it did not attempt to recoup the excess funds that it paid to the Claimants, though it could have done so. In addition, the Carrier offered the Claimants bumping rights; it had no obligation to do so. Because the burden of proof is on the Organization, the Carrier contends that the Organization cannot meet its burden of proof. The Carrier contends that it acted appropriately when it reduced the Claimants' rate of pay to comport with the parties' Agreement.

After a review of the evidence and positions of the parties, this Board finds that the Organization has been unable to meet its burden of proof. The Organization has been unable to prove that the Carrier violated the Agreement when it reduced the compensation of the Claimants from Grade 12(A) to Grade 12(B). The plain language of the Agreement provides that the Claimants should

have been paid at the Grade 12(B) rate of pay. The Carrier was merely attempting to correct its error and comply with the plain language of the Agreement. See Third Division Awards 32036 and 22088.

The Board is mindful, however, that the Claimants may have relied on the rate of pay listed on the job bulletins when exercising seniority and that such reliance may have been potentially detrimental to them when the rates were lowered. Had the claim requested abolishment and rebulletining, the affected position could have been contemporaneously abolished when the rate of pay was adjusted and re-advertised with the correct rate of pay. Because the claim did not make such a request, the Board is unable to grant that relief. Therefore, the claim is denied.

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 27th day of August 2010.