

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44607
Docket No. SG-45553
22-3-NRAB-00003-190451**

The Third Division consisted of the regular members and in addition Referee Kathryn A. VanDagens when award was rendered.

**(BROTHERHOOD OF RAILROAD SIGNALMEN
PARTIES TO DISPUTE: (
(ILLINOIS CENTRAL RAILROAD COMPANY)**

STATEMENT OF CLAIM:

“Claim on behalf of all CN/CCP IC – BRS represented employees, to be made whole for the COLA payments that were improperly deducted from their payroll, account Carrier violated the terms of the National Agreement when it arbitrarily deducted the COLA payments from the employees retroactive wages that were negotiated in said Agreement. Carrier's File No. IC-BRS-2018-00005. General Chairman's File No. IC-005-18. BRS File Case No. 16028-IC. NMB Code No. 6.”

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 Claimants in the instant case are all CN/CCP IC–BRS represented employees. This dispute arose when the Carrier deducted Cost-of-Living Allowances (COLA) from the Claimants’ back-pay following the ratification of the National Agreement on December 1, 2017. Pursuant to that Agreement, the Organization’s

members were entitled to receive wage increases effective July 1, 2016 and July 1, 2017, which were paid retroactively. When Illinois Central paid those retroactive increases, it deducted the total compensation employees had already received, including the COLA payments.

By letter dated March 2, 2018, the Organization presented a claim to the Carrier which was denied by letter dated April 25, 2018. The parties were unable to resolve the claim on-property, so it is now properly before this Board for final adjudication.

Article 3, Sections 1, 2 and 3 of the Signalmen's Agreement provide,

**ARTICLE III — COST-OF-LIVING ALLOWANCE AND
ADJUSTMENTS THERETO AFTER JANUARY 1, 2016**

**Section 1 - Cost of Living Allowance and Effective Dates of
Adjustments**

A cost-of-living allowance will be payable in the manner set forth in and subject to the provisions of this Article, on the basis of the 'Consumer Price Index for Urban Wage Earners and Clerical Workers (Revised Series) (CPIW)' (1967=100), U.S. Index, all items-unadjusted, as published by the Bureau of Labor Statistics, U.S. Department of Labor, and hereinafter referred to as the BLS CPI. The first such cost-of-living allowance shall be payable effective January 1, 2016 based, subject to paragraph (d), on the BLS CPI for March 2015 as compared with the BLS CPI for September 2015. Such allowance, and further cost-of-living adjustments thereto which will become effective, will be based on the change in the BLS CPI during the respective measurement periods, consistent with past applications of the COLA allowance.

Section 2 - Application of Section 1 Cost-of-Living Allowances

The cost-of-living allowance provided for by Section 1 of this Article will not become part of basic rates of pay. Such allowance and the adjustments thereto will be applied as follows:

- (a) Hourly Rates - Add the amount of the cost-of-living allowance to the hourly rate of pay produced by application of Article I.

- (b) **Minimum Daily Increases** - The increase in rates of pay described in paragraph (a) shall be not less than eight times the applicable increase per hour for each full-time day of eight hours, required to be paid for by the rules agreement. In instances where under the existing rules agreement an employee is worked less than eight hours per day, the increase will be determined by the number of hours required to be paid for by the rules agreement.
- (c) In making calculations under this Article, fraction of a cent shall be rounded to the nearest whole cent; fractions less than one-half cent shall be dropped and fractions of one-half cent or more shall be increased to the nearest full cent.

Section 3 - Elimination of Previous Cost-of-Living Provisions

This Article replaces any previous cost-of-living provision in effect prior to the effective date, and the arrangements set forth in this Article shall remain in effect according to the terms thereof until revised by the parties pursuant to the Railway Labor Act. Any payments due or paid effective July 1, 2010 or later under previous provisions shall expire as of the effective date of this Agreement and shall be counted toward any payment due under the provisions of Article I.

The Organization contends that there is no agreement between the parties that would permit the Carrier to deduct COLA payments from the Claimant's back pay after ratification of the National Agreement on December 1, 2017. The Organization contends that the Carrier violated the National Agreement by avoiding clear language of the Agreement.

The Carrier contends that this case involves the application of a cost-of-living adjustment known in the rail industry as a "Harris COLA." Harris COLAs are a well-recognized method of protecting union represented employees against wage erosion during the often extended bargaining process under the Railway Labor Act by providing cost-of-living adjustments at periodic intervals after the last negotiated general wage increase. The Carrier contends that Harris COLA payments are an advance against later negotiated wage increases, which are then properly deducted from payments meant to be retroactive.

The Carrier contends that the Organization is seeking a windfall that was never proposed or negotiated. The Carrier contends that this issue was already settled in a similar claim brought by the Brotherhood of Maintenance of Way Employees Division ("BMWED") in 2014 that was squarely rejected by a federal court and a Special Board of Adjustment, both of which concluded that it was appropriate for Illinois Central to deduct Harris COLA payments from retroactive wage increases. The Carrier contends that there is no reason to reach a different result in this case.

The Carrier contends that the parties' prior agreement expressly recognizes their established practice of offsetting COLA payments against retroactive wage increases and nothing in this Agreement expresses an intent for a different result. The parties' practice is consistent with the established and universally recognized practice throughout the railroad industry. The Carrier contends that the Organization has presented no evidence that the parties intended a different result here.

Payment of the COLA increases was made pursuant to the July 2012 agreement between the parties. Thereafter, the parties participated in national handling, producing the December 2017 National Agreement, which called for general wage increases, but did not address the COLA payments directly. When the Carrier deducted the COLA payments from the members' back pay, the Organization objected. The Carrier responded,

These increases retroactively adjusted the employees' wages to the amounts they should have been paid based on the hours they actually worked. Once the final amount was determined, the money that they were actually paid for the time period in question (including any COLA payments) was deducted from the new amount that they should have been paid based on the National Agreement's GWIs. The Company then paid the difference between the two amounts to make each employee whole.

Thereafter, this claim was filed. In addition, the Organization included two other side letters which specifically provided for the deduction of COLA payments from any retroactive wage increases. The Organization pointed out that no similar agreement was reached between the Carrier and the Organization.

Although the 2017 National Agreement does not expressly address deduction of COLA payments from the retroactive wage increases, neither does it provide that the

parties intended for the Organization's members to keep both payments. The Organization does not dispute that the industry practice is to provide COLA payments while negotiations occur in advance of any negotiated wage increase. The Carrier's position is that these COLA payments were intended to be administered as any other "Harris COLA" payments made in the industry. PEB 242 explained their purpose:

Harris COLA" payments are cost of living adjustments that are paid during the period after the amendable date of agreements and during the often lengthy periods of bargaining that occur under the Railway Labor Act. The term is derived from PEB 219 (Robert O. Harris, Chair) that recommended a modified, post-moratorium COLA for a particular situation. Its use has become customary in the industry to mitigate the effects of extended post-moratorium periods without negotiated increases and, following agreement on terms of a successor agreement, offsets are typically provided for Harris COLA payments made during the post-moratorium period.

Report of PEB 242 at 26 n. 4. In a Special Board of Adjustment between Illinois Central and BMWED, the Board wrote,

Turning to the merits, this Board finds that the evidentiary record conclusively establishes that the parties historically have used COLA provisions to help protect employees from the potentially serious impact of inflation during those periods of time, which sometimes have extended for multiple years, when employees are not receiving any general wage increases while the parties engage in negotiations over updates to their Agreement. This concept is straightforward. A COLA provision typically contains a formula for calculating the amount of the COLA payments, which generally are issued on a defined schedule beginning in the year after the date of the last negotiated general wage increase. It is important to note that these COLA payments are not considered to be part of the employees' base rates of pay, and any COLA payments issued to the employees historically have been deducted from retroactive wage increases agreed upon in connection with the parties' new Agreement update. Moreover, the COLA payments historically have ceased upon the implementation of the new wage schedule with its incorporated general wage increases.

The same can be said of the COLA payments made pursuant to the Illinois Central-BRS Agreement which specifically provided that “cost-of-living allowance ...will not become part of basic rates of pay.” Furthermore, the Agreement provided that COLA payments would expire and “shall be counted toward any payment due under the provisions of Article I.” Thus, the parties did not negotiate a provision that evidences an intent to make COLA payments a permanent part of the employees wages, surviving beyond the effective date the new agreement was reached. These provisions were self-executing and became operative once the new National Agreement providing for retroactive wage increases was ratified.

The language of the collective bargaining agreement is clear. Given the industry practice and the language in the 2012 Agreement, if the parties did not intend for the COLA payments to be deducted, then language to that effect should have been negotiated. This Board finds that the parties did not intend for the Organization’s members to receive COLA payments and retroactive wage increases for the same period. The Carrier did not violate the Agreement by deducting the “Harris” COLA payments from the retroactive wage increase.

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 29th day of October 2021.