Award No. 16
Case No. 22

PUBLIC LAW BOARD NO. 1660

Parties: Brotherhood of Railway, Airline and Steamship Clerks

and

The Long Island Rail Road Company

Statement of Claim: "Claim of the System Committee that:

1. The Carrier violated the established practice, understanding and rules of the Brotherhood, particularly the Attrition Agreement, Article III, Section 1, Paragraph C.

2. The Carrier shall pay Clerk R. W. Howard, the correct total compensation between the rate of his previous position and the rate of the position he was forced to take. This amount shall be adjusted retroactive from January 26, 1976 to the present date."

Discussion: Article III, Section 1(c) of the Attrition Agreement states:

"Each displacement allowance shall be a monthly allowance determined by computing the total compensation received by the employe and his total time paid for during the last twelve (12) months in which he performed service immediately preceding the date of his displacement (such twelve (12) months being hereinafter referred to as the 'test period'), by dividing separately the total compensation and the total time paid for by twelve, thus producing the average monthly compensation and the average time paid for, which shall be the minimum amounts used to guarantee the displaced employe, and if his compensation

> in his current position is less in any month in which he performs work than the aforesaid average compensation he shall be paid the difference, less compensation for any time lost on account of voluntary absences ..."

The Claimant was displaced from his position by a senior employee. Accordingly, he made application for a displacement allowance. Although he was initially denied such an allowance, the Carrier agreed to apply the "make whole" provisions of the Agreement to the Claimant.

A dispute arose between the parties as to how this allowance was to be computed, particularly with regard to the inclusion of the cost-of-living adjustments. The June 11, 1974 Agreement, in Article II dealing with cost-of-living adjustments, states in part:

> "Every employee covered by this Agreement shall receive a Cost-of-Living Adjustment. The Cost-of-Living Adjustment shall be determined in accordance with changes in the Consumer Price Index....
>
> . . . .
>
> No part of the Cost-of-Living Adjustment so granted shall be made part of the hourly or daily rate of pay during the term of this Agreement."

The Claimant's base pay prior to his displacement was $309.88 from which the Carrier deducted $8.80 as the amount that should be added to the base pay as the contractual cost-of-living adjustment. The Claimant's test period earnings were then $301.08.

The Claimant's current position pays him $290.19. However, in computing the displacement allowance the Carrier added the

$8.80 cost-of-living adjustment to his current salary, for a total of $298.99, and thus computed his displacement allowance to be $3.09.

The Claimant contended this was error in that the Carrier could not deduct the Cost-of-Living Adustment from his test or base earnings but nevertheless add it to his current salary in computing the amount of his displacement allowance. He added that Article III of the Attrition Agreement states that the employee's monthly allowance shall be determined by computing the total compensation received in the last 12 months he performed service, and divided by 12 in order to ascertain his monthly guaranteed rate. The Claimant stated his COLA was part of the total compensation he received during his test period.

The Carrier stated that cost-of-living adjustments are not part of the basic wage and therefore it cannot be utilized in determining the average monthly guaranteed rate or salary. The Carrier alluded to Article 2 of the June 11, 1974 Agreement which stated that no part of the COLA shall be made part of the hourly or daily rate of pay during the life of the Agreement. By including the COLA into the base salary of the Claimant, the Carrier contended it would be giving COLA a permanency which it was not intended to have.

Findings: The Board, upon the whole record and all the evidence, finds that the employee and Carrier are Employee and Carrier within the meaning of the Railway Labor Act; that the Board has jurisdiction over the dispute and that the parties to the dispute were given due notice of the hearing thereon.

The Carrier correctly deducted the amount of the COLA received by the Claimant from his test period earnings in determining the total amount of compensation received during aforesaid test period. The June 11, 1974 Agreement makes it clear that the COLA is not part of the employee's basic wage or salary structure, but rather is a temporary or stop-gap measure to enable the employee to cope with the present exigencies of inflation. Under the provisions of the 1974 Agreement, it could not be made part of the daily or hourly rate of pay. Consequently it was appropriate for the Carrier not to consider the cost-of-living adjustment received by the Claimant during his test period as a part of his total compensation in computing his monthly guaranteed rate.

However, it was error for the Carrier to add the cost-of-living adjustment to the current rate that the Claimant was receiving in his present job. Just as it was improper for the Claimant to add his cost-of-living adjustment to his total compensation to determine his test earnings, so it is improper for the Carrier to add the cost-of-living adjustment that the Claimant is receiving on his present job, to determine the amount of his displacement allowance. Since COLA has no element of permanency in the wage or salary structure, neither party may utilize it in determining the displacement allowance.

Accordingly, we find that if the Claimant's test earnings are $301.08 per week and his current salary on his

present job is $290.19, the Claimant's weekly displacement allowance is $10.89 and not the $3.09 as calculated by the Carrier. The Claimant is therefore entitled to receive the difference between $10.89 and $3.09 for the period from January 26, 1976 to the present.

Award: Claim sustained.

Order: The Carrier is directed to comply with the Award, on or before April 5, 1978.

Jacob Seidenberg

Jacob Seidenberg, Chairman and Neutral Member of Board

F. T. Lynch

F. T. Lynch, Employee Member

H M Chancey

H. M. Chancey, Carrier Member

March 4, 1978