

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 3510

UNITED TRANSPORTATION UNION

and

CSX TRANSPORTATION, INC.  
(Former Chesapeake & Ohio Railway-Proprietor)

AWARD NO. 113

Carrier File No. 4(89-3049)  
Organization File No. NG-28845

STATEMENT OF CLAIM

Claim of the following employees for various amounts which the carrier is recovering as an over payment. These employees are under Washington Job Protection Agreement of May 1936 due to the closure of Gladstone Yard, Gladstone, Virginia, May 25, 1985.

<u>Name</u>	<u>ID</u>
C. W. Robertson, Jr.	70955
G. K. Martin	45146
W. F. Burge, Jr.	41031
C. P. Coleman	70977
W. E. McCormick	75308
P. H. Bugg	131040
J. G. Martin	45143
M. G. Martin, Jr.	72733

F I N D I N G S

The Claimants herein were placed under the Washington Job Protection Agreement of May 1936, owing to closure of

Gladstone Yard on May 26, 1985. On September 15, 1987 the Carrier advised the Claimants that their payments would be increased based on the wage changes granted by the October 21, 1985 UTU National Agreement.

On August 2, 1989 -- some 23 months later -- the Carrier advised the claimants as follows:

An audit of protective benefits (guarantee payments) reveals that your monthly guarantee has been increased through error. Due to the discontinuance of the last yard assignment at Gladstone, Virginia, your monthly guarantee was initially established in the amount of . . . .

Article 7(a) of the May 1936 Washington Job Agreement makes no provision to increase the established amount. As the result of this error, you have been over compensated in the amount of . . . .

The . . . . overpayment will be deducted in ten (10) monthly deductions of . . . .

The stated deductions were then commenced and continued over a ten-month period.

On September 27, 1989 a claim was initiated, arguing that "recovery of overpayments is not supported by any rule of the Yardmen's Agreement, nor are there any provisions for recovery in the Washington Job Protection Agreement of May 1936". The Organization agrees, however, that the increases granted commencing in 1987 were not required by the Washington Job Protection Agreement.

Reference is made throughout the claim handling procedure to Rule 54, Time Limit Rule, which provides that claims must be presented "within sixty days from the date of the occurrence on which the claim . . . is based". The Organization's claim of September 27, 1989 was timely in that it was made within 60 days of the "occurrence" (that is, the notification of forthcoming pay deductions). Likewise, the claim was progressed in timely fashion, despite the fact that correspondence was simultaneously under exchange between the General Chairman and the Senior Director, Labor Relations.

The question arose as to whether the Carrier, in seeking repayment, was also bound by the Time Limit Rule. Public Law Board 2857, Award No. 1 (Blackwell) explores this question in detail and concludes that "there is no basis on which to hold that the Carrier's intended recovery of erroneous payments of wages is barred" by a rule providing a time limit on claims. The Board concurs in this conclusion.

The Board likewise finds that the absence of a rule providing for recovery of overpayments does not lead to the conclusion that errors may not be corrected. Numerous previous Awards support this view.

The Organization, however, points to Awards which hold that an extended lapse of time in seeking repayment goes

to mitigate or eliminate the Carrier's rights. Some of these Awards refer to specific language as to time limits on seeking such repayment and thus are obviously not germane here.

More to the point here are two other cited Awards. Public Law Board No. 1082, Award No. 1 (Hanlon) concerned a 1971 audit which found erroneous calculations for vacation allowances on 1969 earnings. In sustaining the claim against such correction, that Award stated:

The two year lapse of time in the present case is clearly unnecessary and unreasonable and the Carrier's right to recoup the overpayments must be considered barred under the doctrine of laches.

Public Law Board No. 1324, Award No. 15 (Moore) concerned a series of time slips submitted by an employee for an arbitrary payment to which it was later discovered he was not entitled. That Award concluded:

A denial award . . . would result in chaos in the industry. It would allow a Carrier four years later to deny a time claim on the basis that it was an overpayment and paid in error. There would never be an end to such claims.

Here a 23-month period was involved, but unlike the Public Law Board No. 1082 Award, this was not a single payment long completed; payments were being made each month, up to the time the error was discovered. Nor, as in the Public Law Board No. 1324 Award, were these additional payments which the employee had sought and was erroneously granted;

in that case, the Carrier had a fresh opportunity to review each time claim.

In sum, the Board finds that the Carrier acted in good faith as to discovery<sup>u</sup> of its continuing overpayment; that recovery of some overpayment is sanctioned by the absence of any contractual restriction; and that the method of recovery over a 10-month period at least mitigated any resulting hardship to the Claimants. However, in accord with several cited Awards, there is cause to find that such correction must be on a reasonably prompt basis. To seek recovery for payments for a period of almost two years is excessive. Recovery over a period of a full year is, in the Board's view, fully appropriate. As a result, recovery of payments for the period from September 1987 through July 1988 is inappropriate based on the elapsed time involved. The Claimants are to be reimbursed for deductions made for this period.

A W A R D

Claim sustained to the extent provided in the Findings.

The Carrier is directed to put this Award into effect within thirty (30) days of the date of this Award.

*Herbert Marx*

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HERBERT L. MARX, JR., Chairman and Neutral Member

*Virgil V. Elswick*

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VIRGIL V. ELSWICK, Employee Member

*R. O. Key*

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R. O. KEY, Carrier Member

NEW YORK, NY

DATED: *May 30, 1991*