SPECIAL BOARD OF ADJUSTMENT NO. 951

PARTIES	METRO-NORTH COMMUTER RAILROAD COMPANY)	
	)	AWARD NO. 17
TO	AND)	
	)	CASE NO. 34
DISPUTE	BROTHERHOOD OF RAILWAY AIRLINE AND)	
	STEAMSHIP CLERKS, FREIGHT HANDLERS,)	
	EXPRESS AND STATION EMPLOYES)	

STATEMENT OF CLAIM:

1. Carrier violated all the rules of the Agreement made effective January 1, 1983, particularly Rule 7, among others, when it improperly compensated Mr. Spencer Gorley, a Block Operator, at 80% of the applicable rates of pay, instead of the 100% of the applicable rates of pay, he is entitled to.

2. Carrier violated the Agreement when it considers Mr. Spencer Gorley, a newly hired employe for the purpose of applying Rule 7, when in fact he transferred from the M of W Track Department of another craft and class to a Block Operation position coming under the BRAC-TC craft and class.

3. This claim has been initiated and progressed under the provisions of Rule 49 of the Agreement and is a continuing claim as that term is used in paragraph (e) of said rule, and Carrier shall therefore be required to compensate Mr. Gorley for all wages improperly withheld from him beginning with April 25, 1984 and continuing on a day to day basis until such time this claim is satisfactorily settled.

BACKGROUND:

a. History of Dispute

Claimant was employed by the Consolidated Rail Corporation (Conrail) on April 28, 1982 as a trackman in the maintenance of way craft or class which was represented by the Brotherhood of Maintenance of Way Employees (BMWE) and covered by the schedule agreement between BMWE and

Conrail. In connection with the assumption of certain Conrail passenger operations by Metro-North Commuter Railroad Company (Carrier), Claimant transferred to the Carrier asa trackman on January 1, 1983 pursuant to an implementing agreement effective July 27, 1982 among Conrail, Metro-North and the BMWE dated July 27, 1982. Since 1983 Metro-North trackmen have been represented by the International Brotherhood of Teamsters.

Claimant bid and was awarded the position of block operator which he began working on April 24, 1984. That position is part of the craft or class represented by the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers and Station Employees (Organization) and covered by the schedule agreement between that Organization and the Carrier. Rule 7 of the schedule agreement between the Carrier and the Organization provides, inter alia, for payment to new employees of between eighty to ninety-five percent of the rate of agreement positions over the first forty-eight months of employment in those positions. Claimant from the outset of his employment as a block operator received eighty percent of the block operator's rate. When Claimant discovered this fact, he sought the full rate retroactive to the time he first was employed as a block operator. The Carrier declined to pay it.

The Organization grieved the matter. The Carrier denied the grievance. The Organization appealed the denial to the highest officer of the Carrier designated to handle such disputes. However, the dispute remains unresolved, and it is before this Board for determination.

b. Parties' Positions

The Organization vigorously asserts that Claimant is not a "new employee" as that term is used in Rule 7 of the schedule agreement. The Organization maintains that Claimant was a new employee only upon his initial employment with Conrail. The Organization emphasizes that Claimant's moves thereafter were transfers which differentiates Claimant from an individual newly hired by a Carrier. The Organization points to the provisions of applicable agreements which it contends reflect the intent of the parties that transferees shall not be treated as new employees. The Organization cites Rule 4(c) of the schedule agreement providing that employees transferring from the scope of one agreement to another shall not be required to take a written intelligence test a second time. The Organization also cites Article I, Section (G) of the Synthesis of the Non-Operating BRAC National Vacation Agreement providing that service under the agreements of other nonoperating Organizations shall be counted toward the computation of qualifying time for vacations.

The Organization cites NRAB Third Division Award No. 16573, September 13, 1968 (Heskett, Referee) in support of its argument that transferees are not new employees. That award involved the interpretation of the term "new employee" as used in an implementing agreement applicable to the merger of the Norfolk and Western Railway and the Virginian Railway. Citing the well established principle of agreement interpretation that words are to be given their ordinary and usual meaning, the Division ruled that the term was confined to "new hires" and did not encompass existing railroad employees establishing seniority in a craft or class

in which they had not theretofore established seniority. The Organization urges that the rationale of the award is applicable to Claimant's situation in the instant case.

The Carrier maintains that when Claimant transferred from the position of trackman to that of block operator he became subject to the pay provisions of Rule 7 of the schedule agreement applicable to "[N]ew employees hired by Metro-North on and after the effective date of this Rule on positions covered by this agreement. . . ." The Carrier contends that under Rule 7 anyone who for the first time works a position covered by the schedule agreement is a new employee for purposes of Rule 7.

The Carrier points out that even those employees transferring from Conrail in a craft or class represented by the Organization to Metro-North in a craft or class also represented by the Organization are subject to the reduced rate provisions of Rule 7. The Carrier also points out that Rule 7(i) provides such employees ". . . shall be governed by their former entry-rate rule, i.e., Rule 27 of the July 1, 1979 Conrail agreement, as amended, with Conrail service to apply." Rule 27(c)(3) of the Conrail agreement provides that "[S]ervice in a craft not represented by the Organization signatory hereto (BRAC) shall not be considered in determining periods of service under this rule." Thus, urges the Carrier, should the Organization's position be adopted by this Board, Claimant inequitably would be credited with service in another craft or class.

The Carrier also urges that if the Organization's position should prevail, the term "new employee" as used in Rule 7 would be restricted to

employees who have never worked in the railroad industry. The Carrier contends that this would be an absurd interpretation of Rule 7.

The Carrier further argues that even if Claimant was not a new employee entitled only to eighty percent of the rate of the block operator's position, the claim for the full rate of the position is invalid. The Carrier points out that Claimant had not completed forty-eight months of service with Conrail or Metro-North at the time he began service as a block operator. Accordingly, he was not entitled to the full rate of that position.

FINDINGS:

The Board upon the whole record and all the evidence finds that the employees and the Carrier are employees and Carrier within the meaning of the Railway Labor Act, as amended, 45 U.S.C. §§151, et seq. The Board also finds that it has jurisdiction to decide the dispute in this case. The Board further finds that the parties to the dispute, including Claimant, were given due notice of the hearing in this case.

Clearly, this case turns upon the question of whether Claimant is a "new employee" within the meaning of Rule 7 of the schedule agreement.

NRAB Third Division Award No. 16573 appears to shed some light upon the question. That award interpreted the term "new employee" in the context of a dispute substantially similar to the one in this case. The Division's application of the fundamental principle of contract interpretation that words are to be given their ordinary and popular meaning appears to this Board to have been most appropriate. The rationale of the award has great appeal.

However, it is an equally well established proposition of agreement interpretation that language is not to be construed so as to produce inequitable results. We believe, as the Carrier has argued, the interpretation the Organization would place upon the term "new employee" in Rule 7 would restrict its application to employees obtained from outside the railroad industry. Furthermore, under the Organization's interpretation employees such as Claimant with less than forty-eight months service who transferred from a craft or class on Conrail not represented by the Organization to one on Metro-North represented by the Organization would be entitled to compensation at the full rate of the position while employees transferring from a Conrail position represented by the Organization to a Metro-North position represented by the Organization would not be entitled to receive the full rate of the position. Nor would the latter employees receive credit toward the forty-eight months required by Rule 7 to qualify for the full rate of the position for service performed in a Conrail craft or class not represented by the Organization. We believe those results clearly would be inequitable.

The Organization's reliance upon provisions of other agreements in support of its position is misplaced. If anything, those agreement provisions illustrate that where the parties intend a particular result, they specify that result in their agreement. The absence of such specification in Rule 7 raises the inference that the parties either did not contemplate it or intended not to provide for it.

In the final analysis we cannot accept the interpretation of the term "new employee" in Rule 7 of the schedule agreement urged upon us by the Organization. The agreement does not so specify and there is insubstantial evidence that the parties intended such a result.

AWARD

Claim denied.

Wm. E. Fredenberger, Jr.
William E. Fredenberger, Jr.
Chairman and Neutral Member

John W. Folcarelli
John Folcarelli
Carrier Member

John C. Campbell
J. C. Campbell
Employee Member

DATED: Sept. 3, 1986