

Award No. 13
Case No. 14

Special Board of Adjustment No. 956

PARTIES
TO
DISPUTE:

Brotherhood of Maintenance of Way Employees

and

New Jersey Transit Rail Operations Inc.

STATEMENT
OF
CLAIM:

1. Carrier violated the current Schedule Agreement when on August 1, 1984 it failed to compensate properly Plumber Foreman M. Dapice and A. Riso.

2. Carrier shall now properly compensate Dapice and Riso at the incumbent rate of pay agreed upon on December 31, 1982 and pay retroactively the proper rate of pay from August 1, 1984 until the date of this award.

FINDINGS:

Prior to their employment by Carrier, claimants also worked as plumber foremen for Conrail. By a side letter agreement of August 3, 1981 between Conrail and BMWE, they were one of a group of employees who received an incumbent rate. That rate of pay, 2.419.78, was still in force on Conrail on December 31, 1982.

Rule 29 of the July 18, 1983 Agreement between

New Jersey Transit and BMWE reads as follows:

Rule 29-Rates of Pay

"The following rates of pay shall be paid to persons holding positions covered by this Agreement for the following periods:

- 1) For the period from January 1, 1983 to June 30, 1983, the rates of pay for each position in effect on December 31, 1982 on Conrail.
2. For the period from July 1, 1983 to June 30, 1984 the rates of pay for each position in effect under Step 1 to be increased by a general wage increase of three percent (3%).
3. For the period from July 1, 1984 to December 31, 1984, the rates of pay for each position in effect under Step 2 to be increased by a general wage increase of three percent (3%).
4. For the period from January 1, 1985 to June 30, 1985, the rates of pay for each position in effect under Step 3 to be increased by a general wage increase of three percent (3%).

An Appendix A shall be prepared identifying the positions and rates of pay in effect on December 31, 1982 on Conrail and showing the effect of the three general wage increases to be effective during the term of this Agreement."

Claimants were paid by New Jersey Transit the rate of 2419.78 for one and one-half years after their employment on January 1, 1983. However, that rate was reduced on about August 2, 1984 on the ground that the rate exceeded the Plumber Foreman rate on Schedule A and was therefore erroneous.

Carrier maintains that its Labor Relations Department had no prior knowledge of the Conrail "incumbent agree-

ment" and that the Organization had not mentioned it in collective bargaining negotiations. That point is not persuasive in the present case, since Carrier could have explored with Conrail potential labor relations problems, agreements and bargaining history before entering into an agreement with such important consequences. It is significant that C. P. Leo, Carrier's Chief Engineer who served Conrail in a somewhat similar capacity and F. J. Flynn who served as a Superintendent for both railroads, were aware of the agreements and applied them for 1 1/2 years on New Jersey Transit.

Unlike the situation in other New Jersey Transit craft agreements, the Maintenance of Way Agreement in question does not provide for the elimination of all agreements and understandings that existed or were in effect prior to its effective date. If the omission of critical language in the Agreement was due to a typographical or other error, the proper course was to reform the provision and negotiate the correction. This Board is not at liberty to indulge in conjecture to remedy the situation by supplying the missing language.

Appendix A is not controlling; it is merely the document on which rates provided for in Rule 29 are to be set forth. As Carrier concedes, Appendix A was only partially prepared when the Agreement in which it appears was initialed by the parties.

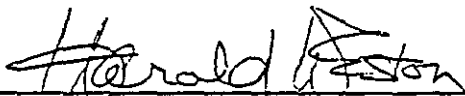
This is not a case where a petitioner failed to satisfy its burden of proof. It showed clearly that the disputed rate was in effect for a position in effect on December 31, 1982 on Conrail. It was then incumbent upon Carrier to go forward

and prove that the rate nevertheless is not applicable here.

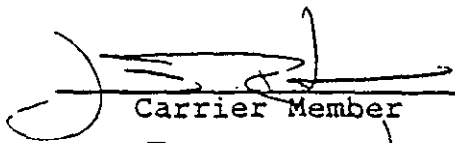
In the absence of additional evidence, no convincing basis is perceived on this record for Carrier's belated attempt to deprive claimants of the rates of pay that they had received without any objection for one and one-half years since becoming New Jersey Transit employees. Since those rates were established under the Conrail letter agreement of August 3, 1981, they are subject to all conditions of that letter agreement.

AWARD: Claim sustained in accordance with last paragraph of Findings. To be effective within 30 days.

Adopted at Newark, N. J., 11/19/ 1985.



Harold M. Weston, Chairman



Carrier Member
Dissect & follow



Employee Member

Interpretation No. 1 to
Award No. 13
Case No. 14

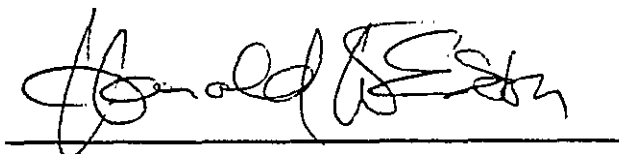
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In Award 13, we held that the \$2419.78 rate paid plumber foreman position incumbents under a Conrail letter agreement of August 3, 1981 should have been continued without reduction for those incumbents by New Jersey Transit. The incumbents had received that rate without objection for one and one-half years after they had become New Jersey Transit employees on January 1, 1983.

A. Riso, one of the specified incumbent employees in 1981, voluntarily quit a plumber foreman position in March 1984 and took a different position. In December 1985, he returned, again voluntarily, to a plumber foreman position; the advertised rate of that position was less than the above mentioned \$2419.78 prescribed by the Conrail letter agreement. He now seeks the difference between the two rates on the basis of our Award No. 13.

Mr. Riso is entitled to the higher rate up to the time he voluntarily left his plumber foreman position. However, that higher rate does not belong to the position. Once Riso left upon his own volition, the special higher rate no longer applied to him. Upon his return to a plumber foreman position, he was not entitled to the special August 3, 1981 letter agreement rate. His return was without conditions and the advertised rate of the present position controls.

February 2 1986

A handwritten signature in dark ink, appearing to read "Donald R. Smith", is written over a horizontal line.