

PUBLIC LAW BOARD NO. 5022

PARTIES)
TO)
DISPUTE) TRANSPORTATION COMMUNICATIONS UNION
 NATIONAL RAILROAD PASSENGER CORPORATION

STATEMENT OF CLAIM

1. Claim of the General Committee that Carrier violated Rule 11 and Article III of the April 15, 1986, National Agreement when it waived the "entry rate" for employee Stephanie Miller and failed to waive the "entry rate" for other employees covered by the same Rule and National Agreement.
2. Carrier shall now pay employee C. Caunan, and all other employees who are being paid an "entry rate", the full negotiated job category rate effective on or about June 19, 1989.
3. Carrier shall now pay all the employees listed in Carrier's letters dated April 17, 1990 and October 16, 1990 (TCU Exhibits 9 and 12 respectively), the full negotiated job category rate effective on or about June 19, 1990 (Carrier file TCU-TC-3157, etc.; TCU file 393-79-022, etc.).

OPINION OF BOARD

Negotiations for the April 15, 1986 Agreement yielded a revision to the pay rate for employees entering the Carrier's service after April 15, 1986 as follows (Article III; Rule 11; Carrier Exh. 10):

- (i) For the first twelve (12) calendar months of employment, such employees shall be paid 75% of the applicable rates of pay (including COLA).
- (ii) For the second twelve (12) calendar months of employment, such employees shall be paid 80% of the applicable rates of pay (including COLA).
- (iii) For the third twelve (12) calendar months of employment, such employees shall be paid 85% of the applicable rates of pay (including COLA).
- (iv) For the fourth twelve (12) calendar months of employment,

such employees shall be paid 90% of the applicable rates of pay (including COLA).

(v) For the fifth twelve (12) calendar months of employment, such employees shall be paid 95% of the applicable rates of pay (including COLA).

On June 19, 1989 the Carrier hired Stephanie Miller for the position of Secretary I to the General Superintendent, Western Division in Los Angeles and compensated her at the full rate for Secretary I (\$98.00 per day) as opposed to the 75% entry rate (\$73.50 per day). The instant claim followed on behalf of employees receiving a pay rate in accord with the entry rate progression.¹

Clearly, the Carrier violated the Agreement by failing to adhere to the entry rate progression set forth in the Agreement when it paid the full rate to the newly hired Secretary I in Los Angeles instead of 75% of that rate. The Carrier's argument that it is free to hire employees at a rate above the entry rate progression is not persuasive. The language is clear. The entry level progression rates are not minimum rates. For newly hired employees (as well as others in the various steps of the progression) the Agreement requires that "such employees *shall* be paid" at the specified rate corresponding to length of service [emphasis added].

As a remedy, in this case we shall not require the Carrier to raise the entry rates to the full rate for those employees hired after the effective date of the Agreement as requested by the Organization. It does not follow that violation of a provision of a collective bargaining agreement by one party dictates that the language of that provision be declared null and void. The remedy in a case such as this is to require compliance with the terms of the Agreement and, where possible, to structure a monetary remedy commensurate with the violation. To meet that remedial goal, we believe in this case that the appropriate remedy is

¹ The parties agreed that a number of similar claims have been combined and handled jointly for a decision on the merits. See Organization Submission at 1; Organization Exh. 12.

to require the Carrier to abide by the terms of the Agreement and to further pay an amount equal to the difference between Miller's actual earnings at the full rate and the earnings she should have received under the applicable entry rate for the time that her position was covered by the entry rate progression set forth in the Agreement or until the date this award is complied with, whichever date is earlier.² We shall remand the proceedings to the parties for determination of that amount and for further determination of the appropriate method for distribution of that sum.

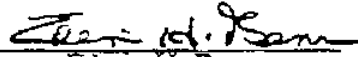
Again, we must remind the Carrier that it is obligated to comply with the explicit terms of the Agreement - in this case a provision that was consistent with the relief it apparently sought during the negotiations leading to the 1986 Agreement. Should the Carrier fail to follow the rate progression in the future, the Carrier runs the risk of a much more substantial remedial order.

AWARD


Claim sustained. The Carrier shall cease and desist from failing to comply with the entry rate provisions of the Agreement. The Carrier shall pay the difference between the amount the Secretary I to the General Superintendent, Western Division in Los Angeles actually earned and the amount she should have earned at the negotiated entry rate progression from the date of commencement of that employee's service until the date that position was no longer subject to the entry rate requirements of the Agreement or until the date this award is complied with, whichever date is earlier. The proceedings are remanded to the parties for determination of the amount due and the appropriate method of

² The Carrier asserts that effective August 27, 1990 the position involved in this case became fully excepted (Carrier Submission at 14; Carrier Exh. 11).

distribution of that sum.


Edwin H. Bean
Neutral Member


V. S. Marshall
Carrier Member


J. C. Campbell
Organization Member

Chicago, Illinois
January 15, 1991