Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 27952
THIRD DIVISION Docket No. CL-27457
89-3-86-3-701

The Third Division consisted of the regular members and in addition Referee Edward L. Suntrup when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(
(Missouri Pacific Railroad Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood (GL-10131) that:

1. Carrier violated the National Agreement of November 21, 1981, to which this Carrier is a party, when it refused to compensate Clerk Peggy Schutt at the ninety (90) percent rate of pay during the second twelve (12) calendar months of employment.

2. Carrier's action is in violation of Article XI of the National Agreement of November 21, 1981.

3. Carrier shall now be required to compensate Claimant Schutt for the difference between eighty (80) percent rate of pay and the ninety (90) percent rate of pay for each work day of Position No. 753-013 Waybill Data Clerk, amount $9.77 per day, commencing July 25, 1985, and continuing five (5) days per week until corrected."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The instant claim deals with the proper interpretation of the following provisions of Article XI of the National Agreement of November, 1981, which read, in pertinent part, as follows:

"ARTICLE XI - RATE PROGRESSION

Article VIII of the January 30, 1979 National Agreement and all other local rules governing rate progression or entry rates are eliminated and the following provisions are applicable:

Special 1 - Service First 24-Months

Employees entering service on and after the effective date of this Article on positions covered by an agreement with the Brotherhood of Railway and Airline Clerks (BRAC) shall be paid as follows for all service performed within the first twenty-four (24) calendar months of service:

(a) For the first twelve (12) calendar months of employment, new employees shall be paid 80% of the applicable rates of pay (including COLA).

(b) For the second twelve (12) calendar months of employment, such employees shall be paid 90% of the applicable rates of pay (including COLA).

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(f) Any calendar month in which an employee does not render compensated service due to voluntary absence, suspension, or dismissal shall not count toward completion of the twenty-four (24) month period."

The Claimant has a seniority date of July 25, 1984. At the time of the claim she was assigned to Waybill Data Clerk position No. 53-103, rest days Saturday and Sunday, pay rate $97.66 per day. The Claimant took maternity leave from March 11, 1985, through June 21, 1985. The claim centers on the pay differential between 80% and 90% after the first twelve (12) months of employment as stipulated in Article XI(1)(a)&(b). According to the Claimant, the time she was off on maternity leave should be counted toward employment. According to the Carrier, it should not be. The Claimant and the Organization argue that the Claimant was not suspended during her first year of employment; she had not been dismissed; and she had not taken a voluntary absence as stipulated by Article XI(1)(f). The Organization argues that pregnancy leave is a medical disability in accordance with the Federal Pregnancy Discrimination Act, and that service credits should continue to accrue during periods of pregnancy leave. The Carrier specifically argues, in denying the claim, that the Claimant "requested" a maternity leave. Therefore, it reasons, such leave fell under the rubric of Article XI(1)(f) as a voluntary absence. The Board is unpersuaded by the Carrier's line of reasoning because maternity leave requirements are not, evidently, solely voluntary. Such conclusion is supported by federal law which defines pregnancy leave as a disability, and by the Carrier's own Maternity Leave Policy of 1984 which states, in pertinent part, that "...pregnancy, childbirth, and related conditions (are recognized as) a medical disability...(and) (s)eniority and service credits continue to accrue

during periods of absence (for these reasons)...." In view of this, the Carrier was in violation of the Agreement when it did not pay the Claimant "...90% of the applicable rate of pay" after July 25, 1985. The claim is sustained.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 6th day of June 1989.

CARRIER MEMBERS' DISSENT
TO
AWARD 27952, DOCKET CL-27457
(REFEREE SUNTRUP)

The Majority correctly finds that maternity leave is to be treated the same as any other medical disability, and accurately quotes from the Carrier's Maternity Leave Policy of 1984 which so states. Our disagreement with the Majority is that it does not treat maternity leave the same as any other medical disability. The Claimant asked, and was granted, a leave of absence that commenced March 11, 1985, and ended June 21, 1985. No medical evidence was provided that such period was medically required.

Claimant wanted the leave to be considered a medical leave. She should have furnished a statment from a physician indicating that the length of her leave was medically required - precisely the same information that would be required in any medical leave case. We know of nothing in the federal legislation or the Carrier's Maternity Leave Policy which relieved Claimant of that responsibility.

M. W. Fingerhut

R. L. Hicks

M. C. Lesnik

P. V. Varga

J. E. Yost