

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

James Thornton, *et al.*,)
)
Plaintiffs,)
)
v.)
)
National Railroad Passenger)
Corporation ("Amtrak"),)
)
Defendant.)

Civil Action No: 98CV0890(EGS)

FILED

JAN - 9 2001

NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT

ADMINISTRATIVE ORDER NO. 2

This matter came before the Court on the Administrators' Motion for Approval of the Point System for Allocating the Settlement Fund and Recommended Distributions from the Fund, dated October 17, 2000, on which the Court conducted a hearing on November 29, 2000. Pursuant to the Court's Order of December 1, 2000, the parties were directed to meet and confer to address concerns expressed by the Court during a telephone conference on November 30, 2000. The purpose of this order is to approve the procedure for the Administrators' distributions from the Fund to eligible Claimants who filed claims prior to June 30, 2000, while broadening the number of class members who will obtain benefits from the Fund by requiring a supplemental claims procedure. This Order incorporates the agreement of the parties and modifies the Consent Decree and Administrative Order No. 1, to the extent necessary to effectuate the intent of the Court.

(2)

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IT IS HEREBY ORDERED THAT:

1. The Court's Order of October 24, 2000 is vacated.
2. Class members are hereby divided, for purposes of receiving awards out of the Settlement Fund in 2000-01 (the "Initial Awards"), into two groups. The first group shall consist of all eligible claimants who submitted claim forms postmarked on or before June 30, 2000, and the five late filers identified in the Administrators' motion filed October 17, 2000 (together "Original Awardees"). The second group shall consist of all persons who: are not Original Awardees, are class members by reason of their status as employees or former employees in BMW-represented positions, and submit claim forms in accordance with the procedure described in paragraph 8 below ("Supplemental Awardees").
3. The Administrators shall create as of December 18, 2000 out of the Claims Portion of the Settlement Fund an Appeal Reserve of \$50,000, a Fund Income Tax Reserve of \$25,000, and an Employment Tax Reserve of \$100,000. The Administrators also shall set aside \$114,754.65 for payment to the Pennsylvania Federation of Brotherhood of Maintenance of Way Employees.
4. After creating such reserves, the Administrators shall divide the remainder of the Claims Portion of the Settlement Fund (the "Distributable Portion") into three subparts. The "Original Awardees' Claims Portion," which shall be used to pay the Initial Claims Awards of Original Awardees, shall consist of 51.9% of the Distributable Portion as of December 18, 2000, together with earnings thereon. The "Original Awardees' Contributions Portion," which shall be used to pay the Initial Contribution Awards of Original Awardees, shall consist of 23.1% of the Distributable Portion as of December 18, 2000, together with earnings thereon. The

“Supplemental Awardees’ Portion,” which shall be used to pay the Initial Awards of Supplemental Awardees, shall consist of 25% of the Distributable Portion as of December 18, 2000, together with earnings thereon.

5. The formula proposed by the Administrators in its filings of October 17, 2000 shall be the formula used to calculate the number of claim points and the number of contribution points for each of the Original Awardees.

6. The Original Awardees shall receive the number of claim points and the number of contribution points attributed to each of them in the Administrators’ filings of October 17, 2000. The five late filers included among the Original Awardees shall receive the numbers of points shown on the accompanying Exhibit A, submitted under seal.

7. The Administrators shall, as soon as practicable, send to each of the Original Awardees a notice informing each of them of the total amount of his or her Initial Award out of the Original Awardees’ Claims Portion and the Original Awardees’ Contributions Portion, and enclosing the other documents required by the Consent Decree, Administrative Order No. 1, and this Order to be sent to all awardees. In calculating those awards, the Administrators will assume that the moneys in the Original Awardees’ Claims Portion and the Original Awardees’ Contribution Portion will earn investment income, on average, through January 5, 2001. The Administrators shall have the goal of beginning the distribution of awards to Original Awardees prior to December 31, 2000.

8. Amtrak shall serve on the Administrators, on or before January 12, 2001, a list of names and last-known addresses of persons who are class members by reason of their status as employees or former employees in BMW-represented positions, along with each person’s BMW seniority date and dates of employment at Amtrak. The Administrators shall eliminate

all Original Awardees from the list, correct the address list to the extent they have subsequent information, and shall then mail each remaining person a notice and Supplemental Claim Form attached as Exhibit B hereto, along with an estimated award if 75% of the eligible class members submit valid Supplemental Claim Forms, on or before January 22, 2001. The Administrators and counsel for Amtrak shall agree to the language of the notice on or before January 5, 2001, which language shall, among other things, make clear Amtrak's support for the supplemental claims process. If any mailings are returned as undeliverable, the Administrators shall use reasonable efforts to locate the current address of the addressee and mail the materials to the addressee. No person may become a Supplemental Awardee unless he or she has submitted a signed Supplemental Claim Form to the Administrators postmarked by February 23, 2001 and has indicated his assent to questions 9.a-9.c on the form.

9. Each Supplemental Awardee shall receive up to 200 points. Up to 100 points will be based on seniority at Amtrak as of May 5, 2000 as follows:

0-1 year	10 points
2 years	20 points
3 years	30 points
4-5 years	40 points
6-8 years	50 points
9-12 years	60 points
13-18 years	70 points
19-25 years	80 points
more than 25 years	100 points.

Up to 100 points also will be based on years worked during the liability period (through May 5, 2000), as follows:

Less than one year	16 points
1 year	33 points
2 years	49 points
3 years	66 points
4 years	83 points
5 years	100 points

10. The value of each point will be calculated by dividing the total number of points awarded into the moneys in the Supplemental Awardees' Portion as of March 30, 2001, except that the value of each point shall not be more than the value of each claim point awarded to Original Awardees. If the quotient of dividing the total number of points awarded to Supplemental Awardees into the moneys in the Supplemental Awardees' Portion as of March 30, 2001, is greater than the value of each claim point awarded to Original Awardees, then the excess will be distributed to Supplemental Awardees and to Original Awardees in proportion to each person's number of claim points.

11. On or before March 23, 2001, the Administrators shall mail notices of awards to each Supplemental Awardee (and to each Original Awardee under the circumstances set forth in paragraph 10) along with the other documents required by the Consent Decree, Administrative Order No. 1, and this Order to be sent to all awardees.

12. After distributing the Initial Awards, the Administrators shall recombine the Distributable Portion for purposes of the distributions to be made out of the Fund in 2002 ("Second Awards"). The Administrators may apply to the Court for an increase or a decrease in the amount of the reserves prior to making the Second Awards, and shall set aside \$68,852.79 with interest for payment to the BMW. Each Claimant, whether an Original Awardee or a Supplemental Awardee, shall be entitled to a Second Award out of the Distributable Portion calculated by multiplying the funds in the Distributable Portion by the Initial Award to that Awardee and dividing by the total amount of the Initial Awards to all Awardees.

13. Each distribution to a Supplemental Awardee shall consist of the following:

(a) prejudgment interest in the amount of 22% of the Initial Award and 35% of the Second Award; (b) backpay in the amount of 52% of the Initial Award and 43% of the Second Award; and (c) compensatory non-punitive non-wage damages in the amount of 26% of the Initial Award and 22% of the Second Award.

14. The procedures for filing and considering administrative appeals from Original and Supplemental Awardees from the Initial Awards shall be as follows:

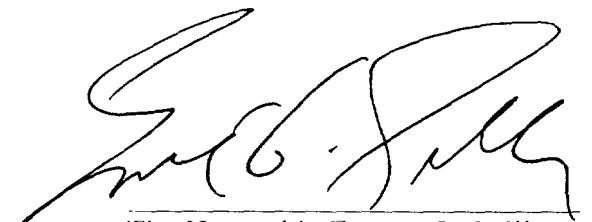
- a. The notices to be sent to Claimants informing them of the amounts of their awards will also advise them of their appeal rights and include a form that must be filled out and signed in order to appeal. To be considered, the signed appeal form must be included in an envelope postmarked within 28 days from the date of mailing the notice (the "appeal deadline"). The notice will state that any Claimant who chooses to appeal will not receive his or her award until the appeal is resolved. The notice also will contain the information described in subparagraphs b., c., and d. below.
- b. The sole bases for appeal shall be mathematical error or failure to consider documentation submitted prior to the deadline for the submission of claims forms and supporting documentation.
- c. The Administrators will have 28 days from the appeal deadline to consider all appeals and make recommendations to the Court concerning the disposition of those appeals. The filing shall include a copy of the appeal form filed by each appellant.

d. Each appealing Claimant will be informed of the Court's decision within seven days after the Administrators receive the Court's decision. There shall be no further right of appeal.

15. If any of the terms in paragraph 2 or 4 is held invalid, the effect shall be to invalidate the whole Order. If any of the other terms of this Order, or the application thereof to any person or circumstance, is held to any extent to be invalid or unenforceable, the remainder of this Order, or the application of such term or provision to persons or circumstances other than those as to which it is held to be invalid or unenforceable, shall not be affected thereby, and each term and provision of this Order shall be valid and enforceable to the fullest extent permitted by law. If there is any conflict between the terms of this Order and the Decree, or any conflict between the terms of this Order and Administrative Order No. 1, this Order shall take precedence.

SO ORDERED:

Dated: 1/5/01


The Honorable Emmet G. Sullivan
Judge, United States District Court
for the District of Columbia

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EXHIBIT A
(REDACTED)

NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT

CLAIMANT/SSN	NAME/ADDRESS	TOTAL POINTS
1356-00 Clm#: 000506		Hiring/Emp: 40 Contribution: 0 Status: Approved
572-00		Hiring/Emp: 479 Contribution: 0 Status: Approved
No Clm#		Hiring/Emp: 1075 Contribution: 0 Status: Approved
No Clm#		Hiring/Emp: 780 Contribution: 0 Status: Approved
No Clm#		Hiring/Emp: 1147 Contribution: 0 Status: Approved

EXHIBIT B

To: AMTRAK MW SETTLEMENT FUND

FILED

CLAIM FORM

JAN - 9 2001

Part A

NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT

TODAY'S DATE: _____, 2000

PLEASE REVIEW CAREFULLY ALL INFORMATION ON THE ADDRESS LABEL BELOW THIS DIALOG BOX. IF ANY OF THE INFORMATION ABOUT YOUR NAME, ADDRESS OR SOCIAL SECURITY NUMBER ON THE ADDRESS STICKER IS MISSING, OUTDATED, OR INACCURATE IN ANY WAY, PROVIDE THE CORRECT INFORMATION BELOW IN RESPONSE TO QUESTIONS 1, 2, 3, AND 9.

IF ALL OF THE INFORMATION ON THE ADDRESS LABEL BELOW IS COMPLETE, CURRENT, AND CORRECT, CHECK THIS BOX:

**READ THE INSTRUCTIONS FORM FULLY BEFORE YOU BEGIN
(Please print clearly or type.)**

1. NAME: _____
(First) (Middle) (Last)
2. STREET ADDRESS: _____ APT. NO. _____
3. CITY: _____ STATE: _____ ZIP CODE: _____
4. HOME PHONE (INCLUDE AREA CODE): _____
5. WORK PHONE (INCLUDE AREA CODE): _____
6. RACE: _____
7. SOCIAL SECURITY NUMBER: _____
8. If your name has changed since you were employed by, or applied to, Amtrak, what was your name when you left Amtrak's employment, or filed your application or resume for employment?

9. I am filing this Claim Form:

a) Because I am Black

AND

b) I want to receive an award from the Settlement Fund

AND

c) I believe that I experienced racial discrimination at least once while employed in Amtrak's Engineering Department for its Northeast Corridor or in Amtrak's Metropolitan Boston Transit Authority service.

TO RECEIVE AN AWARD, YOU MUST CHECK (a), (b) AND (c) ABOVE.

10. I was first employed by Amtrak in a BMW-represented position on: _____

11. IF YOU ARE NO LONGER EMPLOYED BY AMTRAK IN A BMW-REPRESENTED POSITION, STATE YOUR LAST DATE OF EMPLOYMENT: _____. IF YOU ARE CURRENTLY EMPLOYED BY AMTRAK, INSERT "EMPLOYED" IN THE BLANK.

I AFFIRM, UNDER THE PAIN AND PENALTY OF PERJURY IF I AM UNTRUTHFUL, THAT THE FACTS I HAVE STATED IN THIS CLAIM FORM ARE TRUE TO THE BEST OF MY KNOWLEDGE. I UNDERSTAND THAT SPRENGER & LANG MAY CROSS-CHECK ANY INFORMATION THAT I HAVE SUPPLIED WITH THE RECORDS OF BOTH AMTRAK AND THE BMW.

SIGNATURE OF CLAIMANT

DATE

WHEN YOU HAVE COMPLETED YOUR CLAIM FORM, PUT IT IN THE ENVELOPE, ADD POSTAGE AND MAIL IT NO LATER THAN FEBRUARY 23, 2001. YOU MUST KEEP US INFORMED ABOUT ANY CHANGE IN YOUR HOME ADDRESS. IF YOU DO NOT DO SO, AND WE CANNOT LOCATE YOU, YOU MAY LOSE YOUR CLAIM!

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