

Award No. 813

Docket No. 748

2-MKT-CM-'42

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 8, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (CARMEN)**

**MISSOURI-KANSAS-TEXAS RAILROAD COMPANY
MISSOURI-KANSAS-TEXAS RAILROAD COMPANY
OF TEXAS**

DISPUTE: CLAIM OF EMPLOYES: That under the controlling federal regulations and the agreement, coach cleaners are entitled to be paid thirty-eight cents (38¢) per hour retroactive to March 1, 1941.

EMPLOYES' STATEMENT OF FACTS: The carrier's coach cleaners are paid thirty-seven (37) cents per hour.

Prior to March 1, 1941, the carrier paid track laborers thirty-five (35) cents per hour.

Effective March 1, 1941, and subsequent thereto, the carrier's track laborers were paid thirty-six (36) cents per hour, under orders of the Fair Labor Standards Act.

The carrier is under contractual obligation to pay coach cleaners two (2) cents per hour above the rate paid track laborers.

The carrier has declined to pay coach cleaners two (2) cents per hour above track laborers, or thirty-eight (38) cents per hour.

POSITION OF EMPLOYES:

First: Notwithstanding contentions of the carrier to the contrary, the employees contend that—

(a) The Fair Labor Standards Act of 1938 and the agreement, effective September 1, 1938, are controlling in this dispute.

(b) Effective March 1, 1941, the Fleming Order issued in pursuance of the Fair Labor Standards Act, established a basic rate of thirty-six (36) cents per hour for both track laborers and coach cleaners, and which so modified current agreements providing for pay less than thirty-six (36) cents per hour.

Second: Rule 81 (b) of the aforesaid controlling agreement, provides in part that—

"Coach Cleaners shall be paid a rate of two (2) cents per hour above the rate paid regular track laborers * * *." (Emphasis Ours.)

The agreement was to remain in effect until changed in accordance with the Railway Labor Act.

The seventh paragraph, second section, of the Railway Labor Act prohibits the changing rates of pay without negotiations and agreement with the organizations.

The Fair Labor Standards Act did not become a part of the contract.

The 2¢ differential given coach cleaners over section laborers fixed the rate of pay for coach cleaners at 2¢ above the section laborer rates in effect September 1, 1938. Had the rates of pay of section laborers been reduced by negotiations between the carrier and the Brotherhood of Maintenance of Way Employees and the carrier had attempted to reduce the rates of pay of coach cleaners accordingly under article 81 (b), undoubtedly the system federation would have immediately asserted that the rates of pay of coach cleaners was 2¢ above that of section laborers on the effective date of the contract, or September 1, 1938, and said rates could be changed only by new negotiations with the system federation.

To find that the contract rate of pay of coach cleaners was 2¢ above that of section laborers at the respective points effective September 1, 1938, which rates of pay were not to be changed except by future negotiations between the parties to said agreement, would be finding that the employes and carrier made a binding contract; it would give effect to the provisions of Rule 83 (d) and (e); it would conform to the Railway Labor Act; and said finding would retain representation of the coach cleaners under the System Federation.

Except as herein expressly admitted by the carrier, the carrier denies each and every, all and singular the allegations of the employes' submissions and respectfully requests that the petitioner be placed on strict proof of each and every, all and singular the allegations contained in said submissions.

FINDINGS: The Second 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 employe 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.

The parties to said dispute waived right of appearance at hearing thereon.

In this case the Division is rendering this award on the provisions of the agreement only.

Rule 81 (b) of the agreement provides:

"Coach cleaners shall be paid a rate of 2¢ per hour above the rate paid regular track laborers at points where coach cleaners are employed."

The record indicates that track laborers were paid 36¢ per hour.

AWARD

Coach cleaners will be paid 2¢ per hour above the rate paid regular track laborers at points where coach cleaners are employed, effective March 1, 1941.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 6th day of August, 1942.