

Award No. 1209

Docket No. 1132

2-Erie-FO-'47

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee George A. Cook when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 100. RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (FIREMEN & OILERS)**

ERIE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That the established rate of pay for cleaning fire, shaking down fire and dumping pan per engine at Jersey City, Secaucus, Port Jervis, Hornell and Buffalo, were improperly changed and thereby reduced, effective May 16, 1946.

2. That accordingly the carrier be ordered to additionally compensate each affected employe commonly recognized as fire cleaners, assigned regularly or temporarily to perform the aforesaid work, the difference between what they each have been paid and the amount each would have earned at the respective aforesaid seniority points, retroactive to May 16, 1946.

EMPLOYES' STATEMENT OF FACTS: The carrier employed fire cleaners at Jersey City, New Jersey; Secaucus, New Jersey; Port Jervis, New York; Hornell, New York, and Buffalo, New York, on a piece work basis for many years with a guaranteed day rate. The piece work rates and the guaranteed day rates in effect as of May 15, 1946, are set forth in the submitted Exhibit A.

This piece work basis was continued in force and effect subsequent to the current agreement effective January 1, 1944, and this is affirmed by copy of letter submitted, dated January 21, 1944, addressed to Mr. F. H. Murray, district master mechanic, with copy to former General Chairman R. L. Bossard, by Mr. Wm. Moore, superintendent of motive power, identified as Exhibit B. However, effective May 16, 1946, the carrier abolished this piece work basis of payment, and substituted therefor an hourly rate of \$.85 per hour. This is substantiated by letters dated May 8, 1946; May 13, 1946; May 20, 1946, and May 24, 1946, respectively identified as Exhibits C, C-1, C-2 and C-3.

The collective bargaining agreement dated effective January 1, 1944, in conjunction with the Amended Railway Labor Act is controlling.

POSITION OF EMPLOYES: It is submitted that these employe fire cleaners, regularly employed as such on May 15, 1946, at the respective points on the respective shifts at such points named in the submitted Exhibit D, including other employes used in their places or to augment the force of fire cleaners were employes subject to all of the terms of the aforesaid con-

4. The brotherhood does not list the names of employes for whom they are claiming pay nor do they show that any employe lost any pay. In some cases additional employes have been assigned in the cleaning operations so as to better balance roundhouse forces.

5. At no time in the handling of this claim by the brotherhood on the carrier property have they listed employes entitled to additional compensation or the number of engines that they alleged were handled at the roundhouse by which claimants alleged they would be entitled to this additional money.

6. The fact that carrier might temporarily increase the rate of pay of an individual for some special reason does not, in our opinion, forever establish that individual increase as a permanent increase. In this same manner the establishment of an incentive plan by the carrier would not contemplate that the carrier could not again abandon that incentive plan by some reasonable notice, which was given to the general chairman in this case on May 8, 1946.

Employes allege violation of Railway Labor Act but Section 6 of the Railway Labor Act which they cite means "change in agreements" and there was no change in any agreement when the incentive plans were abandoned effective May 16, 1946.

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 were given due notice of hearing thereon.

In the month of May, 1946, the carrier changed the method of payment to employes cleaning fires at Jersey City, Secaucus, Port Jervis, Hornell and Buffalo from piece-work to hourly rates.

When the agreement between the International Brotherhood of Firemen and Oilers and the Erie Railroad was entered into in 1934, dated September 7, and effective October 1, provision was made for working rules.

This agreement did not include rates of pay for hourly workers nor did it include a piece-work schedule of rates, or work operations—and in this respect it is not materially different from many agreements in the industry. It was admitted that the guarantee (not in writing) for piece-workers was not less than the hourly rate.

Piece work had been in effect for certain jobs for more than 30 years.

In the adjustments, or increases, in wages resulting from settlements growing out of territorial or industry wide movements, the employes here involved had for many years received increases in both hourly and piece-work rates. This recognition, with no exception noted, would clearly indicate that the rates of pay—hourly and piece-work—while not negotiated or printed in the agreement made in 1934, were, nevertheless, inherited by the employes' representatives when they were recognized as the bargaining agents of the employes for the purpose of the Railway Labor Act, i.e., "to make and maintain agreements concerning rates of pay, rules, and working conditions."

The law provides for representation of a craft or class of employes and it may not be interpreted as applying, e. g., to representation of hourly rated employes but not piece-work employes all within the same craft or class. Certainly both sides were cognizant of hourly rates and piece-work rates when they collectively bargained on rules, and rules could not be made applicable without recognized or accepted rates.

Admitting no discussion of the question of hourly rates or piece-work rates at the time rules were negotiated, or since, it must be held that the representatives under the Act represent all of the employes with all of the rates—hourly and piece-work, and that any change in either method of payment may be made only in accordance with the agreement or Section 6, of the Railway Labor Act. In other words, 30 days' notice, one side to the other, when rates of pay or rules are to be changed.

AWARD

1. Claim sustained.
2. Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 16th day of December, 1947.