

Award No. 1407
Docket No. 1319
2-IC-EW-'50

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee E. B. Chappell when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION No. 99, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (Electrical Workers)**

ILLINOIS CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That under the current agreement it was improper to change compensating these Communication Department Employees, namely: L. M. Faith, A. T. Hall, E. Gower, W. J. Cummings, R. P. Noble, E. G. Crawford, Urban Bergbauer, V. C. Williamson, W. H. Edgin, E. E. Walker, from their monthly established salaries to the hourly basis of payment, effective September 1, 1949.

2. That accordingly the carrier be ordered to:

- (a) Re-establish the monthly salary of each of the aforesaid employees as of August 31, 1949, less the deduction of \$2.43 per month, effective September 1, 1949.
- (b) Reimburse each of these aforesaid employees the difference between what they earned on the hourly basis of payment and what they were entitled to earn at their proper monthly salaries established in paragraph (a) hereof, retroactive to September 1, 1949.

EMPLOYEES' STATEMENT OF FACTS: Prior to September 1, 1949, the carrier compensated the claimants on a monthly basis, set opposite their names which follow:

Names	Monthly Salary
1—Urban Bergbauer and E. Gower, Automatic Telephone Maintainers, Chicago	\$385.30
2—L. M. Faith, Telephone Maintainer, Paducah.....	\$365.00
3—W. J. Cummings and W. H. Edgin, Cable Splicers, Chicago..	\$365.00
4—E. G. Crawford, Lead Man, Memphis.....	\$365.00
5—E. E. Walker and V. C. Williamson, Teletype Maintainers Chicago	\$352.84
6—A. T. Hall, Memphis, and R. P. Noble, Chicago, Equipment Installers	\$352.84

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.

The primary question presented for decision is whether or not the effective agreement permitted carrier to unilaterally change claimants' guaranteed monthly salaries in effect and being paid to them on August 31, 1949 to the basic hourly rate, effective September 1, 1949.

For many years claimants as "employees regularly assigned to perform road work and paid on monthly basis" had been paid guaranteed monthly salaries on the basis of the minimum hourly rate for 365 eight hour days per year, with no overtime for work in excess of eight (8) hours per day, under a formula as provided in Rule 17 of the agreement effective April 1, 1935. That rule provided:

"If it is found that this rule does not produce adequate compensation for certain of these positions by reason of the occupant thereof being required to work excessive hours, the salary for these positions may be taken up for adjustment."

In conformity therewith, on March 8, 1944 it was agreed, as applicable to claimants E. Gower and U. Bergbauer, that as long as those individual men were so employed, their monthly rates would be continued and they would be "paid overtime on assigned hours on Sundays and holidays, these assigned hours to be the same as those regularly worked on week days, no overtime to be paid for other than regularly assigned hours as noted above. Overtime on Sundays and holidays to cease on expiration of special agreement covering such overtime." It also provided that when those two named individuals "give up these jobs, the employe taking their place is to be paid on a rate based on the standard hourly rate for electrical workers plus a differential of five (5) cents per hour due to the nature of the work."

From that date until September 1, 1949, those two claimants were paid a guaranteed monthly salary based upon Rule 17 of the agreement, effective April 1, 1935, and their March 8, 1944 special agreement.

On July 19, 1949, pursuant to the 40-hour week agreement, Rule 17 was revised effective September 1, 1949 to provide that:

"Employees regularly assigned to perform road work and paid on a monthly basis, shall have their work week reduced one day per week and the hours comprehended in their monthly rates reduced by eight hours per week or 34 $\frac{2}{3}$ hours per month. The monthly rates payable to such employes shall be the rates in effect August 31, 1949 reduced by \$2.43 per month."

However, notwithstanding such agreement entered into on July 19, 1949, the carrier on July 20, 1949, assuming that the agreement permitted such unilateral action, notified the general chairman that claimants' monthly rates would be discontinued at the close of their regular tour of duty on August 31, 1949 and thereafter such employes would be continued on their assignments but would be paid on the basis of the hourly rate used in computing their then monthly rate. The effect of such action was to materially reduce claimants' monthly rated salaries and give no force or effect to Rule 17 effective September 1, 1949. In that connection we have carefully examined the rules

in the light of the record and find no provision in the agreement authorizing such action.

The Railway Labor Act clearly provides that rates of pay, rules or working conditions of its employees, as a class as embodied in agreements, shall not be changed by the carrier except in the manner prescribed in such agreements or in Section 6 of that Act.

The agreement negotiated on July 19, 1949 provided that it should be effective September 1, 1949 and nothing in it should "be held to vary, modify, extend or affect any of the conditions or provisions of the agreement existing prior to September 1, 1949, excepting as specifically provided herein, and shall continue in effect until changed in accordance with the provisions of the Railway Labor Act as amended."

In that connection the rules hereinafter discussed were continued in force and included in the agreement effective September 1, 1949. Rule 1 provided that all employees coming under the provisions of the agreement should be paid on an hourly basis "except as otherwise provided in this schedule of Rules, or as may hereafter be legally established between the carrier and the employees."

Rule 68 established minimum hourly basic rates of pay constituting the least which would be paid to the various classifications of employees covered by the agreement and provided "existing higher rates to be preserved." It also provided that "The application of rates provided in this agreement shall not operate to reduce the present rate of pay for any individual employee or on any class of work." In Award No. 356 this Division construed and applied Rule 68 as protecting "the existing higher rates" of pay then being paid individuals on a job as distinguished from the rate of pay which must prevail for the job itself when that individual was succeeded therein by another employee. Conversely and by analogy the holding has application here to protect the rights of claimants as individuals to receive the higher monthly salary rates of pay being received by them on August 31, 1949. In that regard also Rule 69 provided that the rules and rates of pay then effective were "to remain in force until revised in accordance with provisions of the Railway Labor Act."

In light of the record and foregoing rules the Division concludes that the carrier should be and hereby is required to reestablish the monthly salary of each of the claimants for the respective amounts paid to and received monthly by each of them on August 31, 1949 less \$2.43 per month effective September 1, 1949 and reimburse each of such claimants for the difference between what they earned on the hourly basis of payment and what they were entitled to receive at their aforesaid proper monthly salaries from September 1, 1949 to the effective date of this award.

AWARD

Claim sustained per findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Dorothy T. Fountaine
Acting Executive Secretary

Dated at Chicago, Illinois, this 1st day of August, 1950.

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

(The Second Division consisted of the regular members and in addition Referee E. B. Chappell when the interpretation was rendered.)

**INTERPRETATION NO. 1 TO AWARD NO. 1407,
DOCKET NO. 1319**

**Name of Organization: Railway Employees' Department, A. F. of L.
(Electrical Workers)**

Name of Carrier: Illinois Central Railroad Company

Upon application of representatives of the organization involved in the above Award that this Division interpret the same in the light of the dispute between the parties as to its meaning as provided for in Sec. 3 First (m) of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

The "Question for Interpretation," as stated by the organization is "Do the words in Award No. 1407: 'Claim sustained per findings' apply to the positions as well as the claimants."

In that connection the organization contended that the findings and award controlled the positions. In other words, the organization contended in substance that the findings and award required regular assignment thereto upon a monthly instead of an hourly basis of payment, and thus fixed the rate and amount of compensation required to be paid those employees subsequently assigned to the positions formerly assigned to and occupied by claimants at the time their effective agreement was executed and their claim was initiated.

On the other hand, the carrier contended in substance that the claim as originally initiated and submitted to this Division by claimants was entirely personal and individual in behalf of specifically named claimants; that the findings and award so adjudged their claims; and did not purport to control the positions as now interpreted by the organization, because that issue was never theretofore presented on the property or therein submitted to this Division for decision.

We sustain the carrier's contention. The record, findings and award support that conclusion.

It follows therefore that the interpretation placed upon the findings and award by the organization should be and hereby is overruled and denied in conformity with the foregoing interpretation by the Division.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division**

**ATTEST: Harry J. Sassaman
Executive Secretary**

Dated at Chicago, Illinois, this 24th day of October, 1951.