

Award No. 2584
Docket No. 2423
2-AT&SF-SMW-'57

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Curtis G. Shake when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 97, RAILWAY EMPLOYEES'
DEPARTMENT, AFL (Sheetmetal Workers)**

**THE ATCHISON TOPEKA AND SANTA FE
RAILWAY SYSTEM**

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current Agreement the Carrier improperly changed compensating these Water Service Employees:

D. R. Brechman	K. K. Walton	J. S. Lynnes
D. J. Dodd	F. C. Willhoite	G. W. Johnson
E. D. Ferris	V. McGlothlin	E. R. Symmes
S. W. Rogers	C. E. Shelley	Wm. J. Sell
C. M. Ridel	C. H. Rogers	H. E. Flannery
F. A. Resendes	G. H. Michaels	T. W. Kelley
R. A. Moore	M. Alberico	N. E. Dillman
L. H. Wolfe	F. R. Smith	C. A. Shocklee
B. F. McKinzie	W. S. Behm	H. F. Adams
R. A. Tate		

from the monthly salary basis to the hourly rates of pay effective August 1, 1949.

2. That, accordingly, the Carrier be ordered to:

(a) Re-establish the monthly salaries that were applicable to each of these aforesaid employes as of July 31, 1949 less the deduction of \$2.45 per month effective September 1, 1949, plus the increase accruing to each of them, namely:

D. R. Brechman	K. K. Walton	J. S. Lynnes
G. W. Johnson	D. J. Dodd	F. C. Willhoite

While the handling would naturally affect any payment should a favorable decision be handed down, the real issue in dispute is whether the Carrier does or does not have the right under Rules 13 and 14 to pay Water Service employes on either the hourly or monthly basis, contingent on the circumstances under which they serve, which feature was quite fully discussed in the fourth paragraph of my letter to you of April 12.

Yours truly,

/s/ L. D. Comer''

The above letter clearly demonstrates that the Los Angeles claim on behalf of E. D. Ferris and seven others was not presented to the carrier and progressed within the time limit specified in Rule 33(a) and in line with many awards of the Second Division covering similar cases, the claim should be dismissed for that reason.

In the event the Second Division should decide to assume jurisdiction and rule on the merits of the claim in the instant case, the Board's attention is directed to carrier's Exhibits A and B submitted herewith, which contain the detailed facts and the position of the carrier, there having been no change in the factual situation or the carrier's reasons for originally declining the claim.

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.

This is a claim on behalf of three groups of water service employes, aggregating 28 in number, resulting from the action of the Carrier in applying hourly rates in lieu of monthly rates to the positions occupied by said employes.

It is true that Carriers are prohibited from changing the rates of pay, rules or working conditions of their employes, as a class as embodied in **agreements**, except in the manner provided in the Railway Labor Act. However, Rule 13 of the agreement here before us provides the basis upon which hourly rated water service employes shall be paid, and Rule 14 provides likewise as to monthly rated water service men. It would appear, therefore, that it is contemplated by the agreement that water service employes may be compensated on either an hourly or monthly basis and no rule prohibiting the carrier from so reclassifying the employes in these groups has been called to our attention.

There is nothing in Rule 1(b) or 126 that dictates any different conclusion. Rule 1(b) simply provides that employes shall be paid on the hourly basis, **except as otherwise provided in the agreement** or as may hereafter be established by mutual agreement. It is otherwise provided in the agreement, namely, that water service employes may be paid on a monthly basis. Rule 126 simply establishes the effective date of the agreement and provides that it shall remain in force until it is modified or revised.

We must conclude that the Organization has failed to establish a violation of the Agreement. In view of this conclusion it is unnecessary to consider the Carrier's contention that the claim should be dismissed.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **SECOND DIVISION**

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 30th day of July, 1957.

DISSENT OF LABOR MEMBERS TO AWARD NO. 2584

The majority in their findings correctly state:

"It is true that Carriers are prohibited from changing the rates of pay, rules or working conditions of their employes, **as a class as embodied in agreements**, except in the manner provided in the Railway Labor Act."

but then proceed to uphold the Carrier's unilateral action changing the rates of pay and working conditions of the employes involved, thereby circumventing the Railway Labor Act.

R. W. Blake

Charles E. Goodlin

T. E. Losey

Edward W. Wiesner

James B. Zink