

Award No. 3558

Docket No. 3081

2-CNJ-CM-'60

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee James P. Carey, Jr. when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 72, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Carmen)**

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY

DISPUTE: CLAIM OF EMPLOYEES:

1. That all former Marine Yard employes of the Carrier as shown in attached Exhibit "A" have been improperly paid for all hours worked subsequent to Dec. 1, 1955, in violation of paragraph (b) of Article 3 of the Agreement effective August 30, 1955, and paragraph (a) of Article I of the National Agreement effective December 1, 1955.

2. That, accordingly, the Carrier be ordered to make these employes whole by paying them the difference between the rate of pay of \$2.13 per hour and the rate of pay of \$2.18 per hour, guaranteed to them under the terms of paragraph (b) of Article 3 of the August 30, 1955 Agreement and paragraph (a) of Article I of the National Agreement effective December 1, 1955 for all hours worked during the periods of protection accorded to the employes set forth in paragraph (a) of the August 30, 1955 Agreement.

EMPLOYEES' STATEMENT OF FACTS: On or about November 1, 1955, the Marine Yard employes were transferred, under the terms and conditions of the agreement dated August 30, 1959, to the Elizabethport Freight Car Shops of the carrier. The employes so transferred were paid the hourly rate of \$2.035 per hour as provided for in paragraph (b) of Article 3 of the August 30, 1955 agreement.

On December 21, 1955, there was an agreement arrived at between certain carriers, including the Central Railroad Company of New Jersey, which provided for that effective on December 1, 1955 all hourly, daily, weekly, monthly and piecework rates of pay for employes covered by the agreement, would be increased in the amount of 14½c per hour.

The Central Railroad Company of New Jersey, hereinafter referred to as the carrier, arbitrarily failed to apply the 14½c hourly wage increase to the rates of pay of the former Marine Yard employes, hereinafter referred to as

(b) of Article III of the August 30, 1955 agreement which, as we have previously pointed out, only provides for protection "at the rate of the last position worked at the Marine Repair Yard," and does not provide for any subsequent adjustments in that rate during the protective periods.

Therefore, inasmuch as the claimants have been compensated from December 1, 1955 on at a rate greater than the rate of the last position worked at the Marine Repair Yard, the provisions of paragraph (b) of Article III of the August 30, 1955 agreement have been met and there is no further compensation due.

In conclusion, it is the position of this carrier that this claim should be either:

(1) Dismissed by your Honorable Board due to not having been properly progressed by the employes under the terms of Article V of the August 21, 1954 National Agreement, or

(2) Denied in its entirety inasmuch as the carrier has not violated any of the effective agreements with the employes, and the provisions of the agreement of August 30, 1955 have been fully complied with.

FINDINGS: The Second Division of the Adjustment Board, based 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.

Parties to said dispute waived right of appearance at hearing thereon.

In connection with its sale of a marine repair yard at Jersey City, N. J., in 1955, the carrier entered into an agreement dated August 30, 1955 with System Federation No. 72 in respect of employes subject to displacement as the result of such sale.

In said agreement the carrier undertook to provide employment for a protective period based on seniority of employes at the Marine Repair Yard "at the rate of the last position worked at the Marine Repair Yard." Pursuant to said agreement the claimants were transferred to the freight car shops at Elizabethport about November 1, 1955, and paid an hourly rate of \$2.035 per hour, which was the rate of the last position worked at the Marine Repair Yard. They were employed at Elizabethport as car repairers for which classification the established rate was \$1.985 per hour. Hence, the carrier paid claimants a differential of 5 cents per hour on account of the aforementioned agreement.

In accordance with a national agreement dated December 21, 1955, effective December 1, 1955, the hourly rates of employes including claimants then working as car repairers at Elizabethport, was increased 14½ cents per hour.

The carrier maintains that the increase should be applied to the base rate of \$1.985 for car repairers, whereas the employes insist that it should be added to the hourly rate of \$2.035 per hour established by the job protective agreement dated August 30, 1955.

We think the position of the employes is correct. The agreement of August 30, 1955 guaranteed continued employment for a specified time at the rate of the last position worked at the Marine Repair Yard. This was a minimum rate to which no conditions were attached. It is immaterial that the employes in question were assigned to work for which a rate of \$1.985 was normally paid. The claimants' rate was \$2.035 by reason of the special agreement and when the general increase of 14½ cents per hour became effective, the claimants were entitled to the full benefit of it without diminution.

The record shows that under Article V of the August 21, 1954 National Agreement, a monetary claim for a continuing violation shall not be allowed retroactively for more than 60 days prior to the filing thereof. This claim was filed May 6, 1957 and involves a continuing violation. Accordingly, claimants who were employed at Elizabethport on and after March 6, 1957 and who were not thereafter paid the full amount of the increase of 14½ cents per hour are entitled to be paid the difference from and after that date.

AWARD

Claim sustained as per findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 29th day of September 1960.