

NATIONAL RAILROAD ADJUSTMENT BOARD

Third Division

I. L. Sharfman, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
ILLINOIS CENTRAL SYSTEM

STATEMENT OF CLAIM.—

"Claim of the General Committee of The Order of Railroad Telegraphers on Illinois Central System that the effective date of the rules and regulations of the current schedule agreement negotiated by the Illinois Central System, consisting of the Illinois Central, the Yazoo & Mississippi Valley and the Gulf & Ship Island Railroads, with The Order of Railroad Telegraphers be corrected to read as of November 1, 1931, and that the effective date of the rates of pay as set forth in said schedule agreement be corrected to read as of August 16, 1931."

STATEMENT OF FACTS.—In their ex parte submission the employees made the following statement of facts:

"Under date of June 11, 1929, the General Committee of the organization served the required thirty days' written advance notice on the railroads of its desire to revise the rules of the schedule agreement for the purpose of establishing a six-day work week, and to revise the scale of rates of pay by an increase equal to one and one-third ($1\frac{1}{3}$) hours' pay per day.

"Conferences with the carriers were begun July 9, 1929, and ended December 9, 1929, during which no progress was made. The services of the United States Board of Mediation were thereupon invoked by the organization. Mediation was begun February 26, 1930, and ended March 18, 1930. In the mediation proceedings a mediation agreement was reached on all rules in dispute, to become effective not later than ninety days from the date of the wage settlement. A further mediation agreement was reached, wherein it was agreed to arbitrate the proposed increase in wage rates.

"Arbitration of the wage question was begun July 17, 1931, and ended August 1, 1931 and on August 5, 1931, the arbitration Board handed down its award denying any increase in pay and stipulating that:

"The provisions of this award shall become effective with the beginning of the first pay roll period following the date on which said award is filed, and shall continue in force for the period of one year from the effective date thereof, and thereafter subject to thirty (30) days' written notice by or to the railroads."

"The award was filed before Notary Public Leon M. Goldberg [Golding], for the County of Cook and the State of Illinois, on August 5, 1931. The first pay roll period following the date on which the award was filed began on August 16, 1931.

"As a consequence of the adverse award in the wage settlement, the Committee thereupon proposed to the carriers that the agreed six-day work week rules be made optional in their application on the employees, and in conference with the carriers it was agreed on September 15, 1931, that:

"It will be optional with the employees on seven-day assignments to work either six or seven days as they may elect. Their choice must be made known in writing jointly to the division superintendent and the division chairman before November 1, 1931. Their selection must remain

in effect for a period of ninety days and thereafter subject to thirty days' written notice of desire to change.'

"The rules providing for the six-day work week did not become effective on any employe until November 1, 1931, in accordance with the final agreement of September 15, 1931, quoted immediately above, and within the ninety days from the date of the wage settlement, as agreed in the mediation settlement on rules.

"The schedule agreement thus revised when eventually issued by the management in February 1933, in printed booklet form, bore the effective date of August 16, 1932. This effective date was promptly protested by the Committee, who requested it be corrected to August 16, 1931, to comply with the effective date of the wage award. In later conferences the Committee requested the effective date be made August 16, 1931, as to wage rates, and November 1, 1931, as to rules, to comply with the effective date of the Arbitration Award on wages, and with the mediation agreement in the application of the rules. The managements declined to make the corrections."

In its submission the carrier made the following statement of facts:

"The original schedule contract effective as of August 16, 1932, properly executed by the General Manager and the three General Chairmen of the Order of Railroad Telegraphers on the Illinois Central, The Yazoo & Mississippi Valley and the Gulf & Ship Island Railroads, is on file as a permanent record in the office of the carrier's Assistant Secretary at Chicago, Illinois. The carrier's records show this schedule contract was printed in February 1933, and distributed to the officers and employees of the carrier, as well as the employees' representatives, by the General Manager on February 14 and 15, 1933. * * *

* * * * *

"On February 25, 1933, General Chairman Mulhall wrote a letter to the General Manager, alleging the effective date of the schedule contract should be August 16, 1931. Several letters have been exchanged and conferences held with Mr. Mulhall subsequent to February 25, 1933, concerning his request that the effective date be changed, and the request has been repeatedly declined by the carrier— * * *."

On the cover and fly-leaf of the "Schedule of Rules and Regulations and Rates of Pay for Telegraphers" which was placed in evidence appear the words "Effective August 16, 1932."

POSITION OF EMPLOYEES.—The contentions of the employees were submitted as follows:

"As set forth in our statement of facts, our Committee served thirty days' notice on the management of the railroads on June 11, 1929, of our desire to revise our agreement to the extent of establishing a six-day work week with an increase in the hourly rates of pay of an amount equal to the loss of the seventh day. This proposal was discussed in regularly arranged conferences with the carriers, extending intermittently from July 9, 1929, until December 9, 1929. As no progress was made, we then invoked the service of the United States Board of Mediation in our differences on both questions; that is, on rules and on rates of pay.

"In the mediation proceedings an agreement dated March 18, 1930, was reached on all rules in dispute, with the provision that the rules thus agreed upon in mediation would become effective not later than ninety days from the date of the wage settlement. A copy of the mediation agreement on March 18, 1930, is attached hereto as Employees' Exhibit 'A.'

"During the mediation proceedings, as a settlement on the wage question could not be reached, a further mediation agreement was entered into dated March 18, 1930, in which the carriers and the Committee agreed to arbitrate the—

'Request of the employees for adjustments in present rates of pay equivalent to an increase of one and one-third hours' pay per day for each position covered by the agreement.'

"The Arbitration Board did not meet in hearings until July 17, 1931, and were ended on August 1, 1931. On August 5, 1931, the award of the Arbitration Board was handed down and filed with the court on that day, declining any increase in rates of pay and directing that the provisions

of the award become effective with the beginning of the first pay-roll period following the date on which the award was filed, making the effective date August 16, 1931.

"The award further provided, that it would remain in effect for one year and thereafter subject to thirty days' written advance notice by or to the railroads. Copy of the Arbitration Award is attached hereto as Employees' Exhibit 'B.'

"The situation then stood as follows:

"1. The Arbitration Award to become effective as of August 16, 1931, as related to wages.

"2. The rules as revised in mediation, establishing the six-day work week, to become effective within ninety days thereafter.

"As explained in our statement of facts, that as a consequence of the adverse wage award, the committee, as promptly as possible, on September 14, 1931, after informal discussion had been held with the carriers, requested the management to modify the application of the six-day work week rules in a manner that would permit the shortening of the work week to be optional among the employees. As a result of formal conference between the management and the Committee on September 15, 1931, on this subject matter, reached an understanding wherein it was mutually agreed by both parties, and confirmed in writing, that the working of the six-day week would be optional with the employees, and that they would signify their choice to the carrier and to the organization by joint letter before November 1, 1931. A copy of the understanding thus entered into on September 15, 1931, and effective as of November 1, 1931, bearing the signatures of both parties is attached hereto as Employees' Exhibit 'C.'

"The rules, as revised in mediation on March 18, 1930, thereupon became effective on November 1, 1931, in accordance with the specific provision of the mediation agreement.

"Thus the rates of pay became effective as of August 16, 1931, by order of the Arbitration Board, and the rules, as revised, became effective as of November 1, 1931.

"The Arbitration Award also provided, that its award as to rates of pay which became effective as of August 16, 1931:

"* * * shall continue in force for the period of one year from the effective date thereof, and thereafter subject to thirty (30) days' written notice by or to the railroads."

"Rule 60 of the schedule agreement also provides that no change in the rules and rates of pay shall be made except upon thirty days' notice.

"Since the effective date of the Arbitration Award, August 16, 1931, neither the railroads nor the Committee have served written notice of thirty days upon the other of a desire to change the rates of pay.

"Since the effective date of the rules, as revised in mediation November 1, 1931, neither the railroads nor the Committee have served written notice of thirty days upon the other of a desire to change the rules of the schedule agreement.

"Rule 59 of the schedule agreement provides that each employe shall be furnished by the railroad with a copy of the schedule and all amendments and supplements thereto. In complying with this rule, following a general revision, it is the custom of the railroad to furnish copies of the revised agreement to each employe in printed booklet form, but this was delayed by the railroad following the revision of rates of pay on August 16, 1931, and the revision of rules on November 1, 1931, until February 1933, because of alleged economy.

"Upon the revised agreement being published by the carriers in booklet form in February 1933, it was noted by the Committee that the agreement bore the effective date of August 16, 1932, instead of August 16, 1931, as to rates, and November 1, 1931, as to rules. This obvious error was immediately called to the attention of the management by the Committee by letter dated February 25, 1933, over the signature of the General Chairman. (See Employees' Exhibit 'D' attached hereto.)

"In subsequent conferences with the management, the above related facts as to the correct effective date of the agreement were discussed by the Committee but the carriers declined to make the correction in the effective dates of the rates of pay and of the rules to conform with the facts.

"The Committee requests that the effective date of the rates of pay be corrected to August 16, 1931, to conform with the direction of the Arbitration Award of August 5, 1931, and that the effective date of the rules of the schedule agreement be corrected to November 1, 1931, to conform with the action of the carriers and the Committee in agreeing upon the effective date of November 1, 1931, for the application of the Mediation Agreement of March 18, 1930."

POSITION OF CARRIER.—The contentions of the carrier were submitted as follows:

"The carrier's statement of facts is a resume of its records in this case, all of which is fully substantiated by its records. The printed schedule contract is on file with this Board, and the original contract properly executed by the carrier and the employees' representatives will be made available for examination by the members of the Board at the oral hearing.

"The contract was negotiated between the carrier and the employees' representatives in good faith, and the employees' representatives have not, and can not, deny that the complete contract, including the effective date as of August 16, 1932, and their signatures are all genuine.

"It is the carrier's position that the only way in which the contract could be modified or changed in any manner whatever is by proper negotiations between the carrier and the employees' authorized representatives, in conformity with provisions of the Railway Labor Act.

"Furthermore, it must be conceded by everyone familiar with the provisions of the Railway Labor Act that the question of changing the contract, which has been mutually agreed upon between the carrier and the employees' representatives, is beyond the jurisdiction of this Board.

"In view of the above facts in this case, we respectfully ask that the employees' request be stricken from the Board's docket."

OPINION OF BOARD.—The effective date of an agreement is part of that agreement, and it is not within the authority of this Board to change it. In this case, however, the employees allege that they are only seeking to make the effective date as it appears on the printed schedule correspond to the real date when the provisions of the schedule were intended to be made effective. Such correction of the effective date, if justified, is no more a change in the agreement than is the continuance of the effective date as now printed, if unjustified. This Board is merely being asked, in view of all the circumstances surrounding the dispute, for an interpretation of one of the terms of the agreement as actually fixed by the parties. On this basis jurisdiction is properly assumed.

It is important to note, at the outset, that the dispute here involved is of very limited practical significance. There is no denial by either party that the rates and rules appearing in the printed schedule are effective at least as of August 16, 1932, and are now binding. The controversy is restricted to the question as to whether the rates became effective as early as August 16, 1931, and the rules as early as November 1, 1931. This means that the answer to this question can possess any degree of importance only with respect to situations which had their origin as to rates during the period of twelve months between August 16, 1931, and August 16, 1932, and as to rules during the period of 9½ months between November 1, 1931, and August 16, 1932. While neither of the parties has indicated its reasons for carrying the dispute to determination by this Board, it seems that only claims arising during the periods above defined can be affected by the result, and it is to be regretted that the parties could not have composed among themselves an issue of such limited practical significance.

The employees have established, and the carrier has conceded, that the rates appearing in the printed schedule are, with few exceptions, the result of the Arbitration Award of August 5, 1931, and were made effective as of August 16, 1931, and that the rules appearing in the printed schedule are, with few exceptions, the result of the Mediation Settlement of March 17, 1930, and were made effective as of November 1, 1931. The evidence discloses, however, that some modifications in rates and rules were made subsequent to these effective dates. Under these circumstances the effective date of August 16, 1932, as now appears on the printed schedule and as supported by the carrier, does not conform to the determinations of the Mediation Settlement and Arbitration Award; and, on the other hand, an effective date of August 16, 1931, for rates and of

November 1, 1931, for rules, as sought by the employes, would include some rates and rules agreed upon subsequent to these dates. If the printed schedule is to reflect the facts as they appear to have been established of record, the rates would be made effective as of August 16, 1931, except insofar as subsequently modified in specific instances, and the rules would be made effective as of November 1, 1931, except insofar as subsequently modified in specific instances.

But despite these circumstances the parties could, of course, have agreed that the entire schedule of rates and rules as revised be made effective as of August 16, 1932. Was there such an agreement? The evidence is conflicting. The carrier points to the printed schedule and the original document behind it carrying the signatures of both carrier and employe representatives, upon the title page of which appear the words "Effective August 16, 1932," and it insists that they represent a contractual arrangement which must be accepted at its face value. The employes deny that they intended to enter into any such agreement, or that they regarded the document submitted to them as anything more than copy for the printer, or that they saw the page upon which appeared the words "Effective August 16, 1932," and they insist that only the Arbitration Award and Mediation Settlement fixed the effective dates of the rates and rules. Since, despite the actual printed words, there is no evidence of negotiation under the alleged agreement with respect to the effective date of the schedule, since the date of this agreement is neither of record nor known to the carrier, since there is a correspondence between August 16, 1931, and August 16, 1932, which may well be the result of clerical error, since the printing of the schedule incumbent upon the carrier was long delayed, and since the employes promptly protested the effective date of the schedule upon receiving printed copies thereof, it appears to be reasonable to disregard the extreme claims of both parties.

If the schedule were made effective for rates as of August 16, 1931, except insofar as subsequently modified in specific instances, and for rules as of November 1, 1931, except insofar as subsequently modified in specific instances, effect would be given to all the uncontroverted facts of the situation and neither party would be prejudiced thereby. Such an adjustment appears to be both sound and equitable.

FINDINGS.—The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon and upon the whole record and all the evidence, finds and holds:

That the carrier and the employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the facts of record justify a modification of the effective date of the agreement as it now appears on the printed schedule.

AWARD

Claim sustained, to the extent that the schedule in dispute be made effective for rates of pay as of August 16, 1931, except insofar as subsequently modified in specific instances, and for rules and regulations as of November 1, 1931, except insofar as subsequently modified in specific instances.

NATIONAL RAILROAD ADJUSTMENT BOARD.
By Order of Third Division.

Attest: H. A. JOHNSON
Secretary

Dated at Chicago, Illinois, this 2nd day of February, 1937.