Award No. 912
Docket No. MW-893

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Dozier A. DeVane, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY

THE CHICAGO, ROCK ISLAND & GULF RAILWAY COMPANY

(Frank O. Lowden, James E. Gorman, Joseph B. Fleming, Trustees)

STATEMENT OF CLAIM: "Claim of General Committee, Brotherhood of Maintenance of Way Employes: (a) that extra gang laborers shall be paid the same rates as paid section laborers on the division or district on which employed, as provided for in U. S. National Mediation Agreement, Case No. C-847. (b) That such adjustment of rates shall be retroactive from August 1, 1937."

EMPLOYES' STATEMENT OF FACTS: "Mediation Agreement between Rock Island Lines and the Brotherhood of Maintenance of Way Employes, dated April 18, 1935, in connection with United States Mediation Board Case No. C-847, reads in part:

> '2. The rates for extra gang laborers shall be the same as for section laborers on the Division or District on which employed.' "

POSITION OF EMPLOYES: "In November, 1927, section laborers on four Southern Divisions and extra gang laborers on entire System were excluded from the wage agreement. Under date of August 5th, 1933, the Brotherhood served official notice upon the Carrier, expressing a desire to restore section laborers on the four Southern Divisions, and extra gang laborers, within the scope of the wage agreement, and that a rate of 40¢ per hour be established for these employes. Settlement of the questions involved in that official notice or request was effected through Mediation Agreement, under date of April 18th, 1935 (U. S. National Mediation Board Case No. C-847). We are attaching as Employes' Exhibit 'A' a copy of that Mediation Agreement.

"As will be observed from the Exhibit, and as stated in our Statement of Facts, Part 2 of that Mediation Agreement reads:

> '2. The rates for extra gang laborers shall be the same as for section laborers on the Division or District on which employed.'

"We maintain that the above quoted part of the Mediation Agreement very clearly provides and specifies that rates of pay applicable to section laborers on the several divisions or districts shall likewise apply to extra gang laborers.

'NOTES: (1) Authority from the Chicago, Rock Island & Pacific Ry., Chicago, Rock Island & Gulf Ry., and Peoria Terminal Company does not cover extra gang laborers.'

Under this Mediation Agreement, Case A-395, the employes covered by the Maintenance of Way Agreement, with the exception of the extra gang laborers, were given benefit of the increase agreed upon. The extra gang laborers, being excluded from the agreement by Note 1 in Appendix B of the agreement, were not increased."

POSITION OF CARRIER: "We contend that the request of the Maintenance of Way Committee is for a change in rates of pay for extra gang laborers and, such being the case, they should handle such request through the proper channels with the National Mediation Board, rather than with your Board, as your tribunal has no jurisdiction in connection with establishing or changing rates of pay of employes. The agreement effective April 18, 1935, above referred to in this submission, was reached through Mediation, and the employes should use that medium in their endeavor now to secure increased rates of pay for extra gang laborers.

"However, so that the Board may have full information, we contend that the Mediation Agreement, Case No. C-847, effective April 18, 1935, was canceled by the new agreement with the Maintenance of Way Committee, effective January 1, 1936. In fact, the Mediation Agreement, above referred to, in Item 3, provided:

'The provisions of paragraphs 1 and 2 above shall become a part of the existing agreements between these parties.'

The existing agreement at that time was the one which became effective November 1, 1927, and which 'existing agreement' was canceled by the agreement effective January 1, 1936. No provision was made in the January 1, 1936 contract providing for the same rate of pay for extra gang laborers as is paid to section laborers, nor is any provision to that effect now carried in the present agreement effective May 1, 1938.

"The rates of pay as now received by the extra gang laborers, are, therefore, proper.

"We also contend that because Appendix B of Mediation Agreement, Case A-395, effective August 1, 1937, specifically excluded in Note 1 the provisions of that Mediation Agreement to the extra gang laborers on this property, they are not entitled to increase of 5¢ per hour under that agreement. Attached, marked 'Carrier's Exhibit A,' is copy of Mediation Agreement of August 5, 1937, effective August 1, 1937, to which is attached Appendix B, as referred to above, specifically excluding extra gang laborers on this property from the provisions of that agreement.

"Because the carrier and the representatives of the employes have been unable to agree, the remedy of the employes is to request Mediation, not to appeal to this Board.

"However, as herein stated, we contend your Board has no jurisdiction in this case and, therefore, cannot legally render a decision, but if jurisdiction is taken we contend that their request should be denied on basis that Mediation Agreement, Case C-847, effective April 18, 1935, was canceled by new Maintenance of Way agreement, effective Jan. 1, 1936, and that the Mediation Agreement, effective August 1, 1937, Case A-395, specifically excluded, by Note 1 in Appendix B, extra gang laborers on this property from the provisions of said agreement."

OPINION OF BOARD: The claim in this case is for the same rates of pay for extra gang laborers as are paid section laborers. The claim arises from the fact that carriers did not give to extra gang laborers the increase of five cents (5¢) per hour granted section laborers and certain other employes by the Mediation Agreement of Aug. 5, 1937.

The contract relationship between the parties is covered by two agreements. One governs the hours of service and working conditions and the other the rates of pay. An agreement governing hours of service and working conditions, sometimes hereinafter referred to as Rules Agreement, negotiated by the parties, became effective Nov. 1, 1927. This agreement was superseded by an agreement of the same character effective Jan. 1, 1936, and this later agreement was also superseded by an agreement dated May 1, 1938, which latter agreement is now in effect between the parties.

Extra gang laborers were covered by all three agreements and the Brotherhood of Maintenance of Way Employes has been the duly authorized representative of this group of employes since Nov. 1, 1927.

The agreement governing rates of pay was arrived at through Mediation —Case C-233. It was executed Nov. 7, 1927, effective Nov. 1, 1927. Section 10 of this agreement provided as follows:

"(a). The rates of section and shop laborers on the First District, St. Louis-Kansas City Terminal and Kansas Divisions on the Second District.....No change.

(b). Exclude all other section and shop laborers from this wage request. Management to establish rates.

(c). Exclude all extra gang laborers, entire system, from this wage request. Management to establish rates."

It will be noted that by this section of the agreement the wages of certain section laborers and all extra gang laborers were left with the management. On Aug. 5, 1933, the General Chairman of the Brotherhood served formal notice upon carriers demanding the establishment of specific agreed-upon rates of pay for all section and extra gang laborers. Increases over rates then in effect were demanded for all employes affected. Conferences were held by the parties and failing of agreement the Brotherhood on Aug. 5, 1933, invoked the services of the Board of Mediation in the dispute. This action resulted in Mediation Agreement, Case C-847, dated April 18, 1935. Except for the signatures this agreement is set out below:

"MEDIATION AGREEMENT

Brotherhood of Maintenance of Way Employes

vs.

Rock Island Lines

In settlement of questions in dispute between the above railroad and the employes of said railroad represented by the above organization, which was submitted to mediation August 15, 1933, under the provisions of the Railway Labor Act (U. S. National Mediation Board Case No. C-847), it is mutually agreed by the above parties that the following shall constitute full and complete settlement of all matters submitted to the National Mediation Board:

1. The carrier grants an increase of 2 cents per hour over present rates of pay to section laborers on the Arkansas-Louisiana Division, effective July 1, 1935, and hereby establishes these revised rates as well as the present rates of section laborers on the El Paso-Amarillo, Oklahoma, and Southern Divisions as their agreed-upon rates.

2. The rates for extra-gang laborers shall be the same as for section laborers on the Division or District on which employed.

3. The provisions of paragraphs 1 and 2 above shall become a part of the existing agreement between the parties.

This agreement shall be effective as to the wage increase on the Arkansas-Louisiana Division on July 1, 1935, and as to other matters on the date of this agreement.

Signed on behalf of the respective parties this the eighteenth (18th) day of April, 1935."

Petitioner contends that paragraphs 1 and 2 of this agreement became a part of the Wage Agreement of Nov. 7, 1927, and it is relying upon paragraph 2 of said Mediation Agreement to sustain the claim in this case.

Carriers contend that the Mediation Agreement of April 18, 1935, became a part of the Rules Agreement of Nov. 1, 1927, which was canceled and superseded by the agreement of Jan. 1, 1936. The confusion as to which agreement is referred to in paragraph 3 of said Mediation Agreement arises from the following circumstances.

The Brotherhood, in its application to the Board of Mediation invoking its services in the dispute, referred to only one agreement between the parties—that of Nov. 1, 1927, governing hours of service and working conditions. Carriers contend that as this is the only agreement mentioned in the application for mediation, paragraph 3 of the Mediation Agreement must refer to said agreement of Nov. 1, 1927, and can refer to no other agreement.

The Agreement of Jan. 1, 1936, canceled and superseded the Agreement of Nov. 1, 1927, but made no reference to the Mediation Agreement of April 18, 1935. However, if said Mediation Agreement became a part of the Agreement of Nov. 1, 1927, the Agreement of Jan. 1, 1936 canceled it also, as the entire former agreement as it existed on the latter date was canceled.

Petitioner contends that the notice of Aug. 5, 1933, was a demand for the modification of the Wage Agreement of Nov. 7, 1927; that the service of the Board of Mediation was invoked for that purpose; and, that paragraphs 1 and 2 of the Mediation Agreement of April 18, 1935, amended Section 10 (b) and (c) of said agreement. Petitioner also points out that the reference in the application to the Board of Mediation to the agreement of Nov. 1, 1927, was merely to advise said Board as to the agreement making it the duly authorized representative of the employes involved.

The record in this case does not contain a complete copy of the notice of Aug. 5, 1933, or a copy of the transcript of the proceedings before the Board of Mediation. This Board, therefore, is unable to determine from this record whether the Mediation Agreement of April 18, 1935, became a part of the Rules Agreement of Nov. 1, 1927, or of the Wage Agreement of Nov. 7, 1927.

Carriers contend that whether paragraphs 1 and 2 of the Mediation Agreement of April 18, 1935, became a part of the Agreement of Nov. 1, 1927, or the Agreement of Nov. 7, 1927, is an issue outside the jurisdiction of this Board for the reason that an interpretation of the meaning or application of a Mediation Agreement is involved—a matter over which the Mediation Board has exclusive jurisdiction.

This contention is based upon the erroneous premise that an **interpretation** of said Mediation Agreement is involved. Had paragraph 3 of said agreement specified the "existing agreement" referred to, surely it would not be contended that an interpretation would be required before this Board could direct compliance with the "existing agreement" as amended. The same would be true if the notice of Aug. 5, 1933 specifically stated the changes the Brotherhood desired to make and the contract to be amended or if the record of Mediation left no doubt upon the subject and a copy of either was part of the record in this case. At most, only the determination of a fact is involved. However, it is necessary that the record in this case be further

supplemented before the controverted fact may be determined by this Board. The best method of perfecting the record should be determined by the parties.

Carriers further contend that the Mediation Agreement of Aug. 5, 1937, specifically denied to extra gang laborers an increase in pay and that it is therefore immaterial in this case whether the Mediation Agreement of April 18, 1935 was canceled by the agreement of Jan. 1, 1936. The basis for this contention arises out of the following facts.

When the general wage increase movement was inaugurated in March, 1937, these carriers made it perfectly clear to the General Chairmen of the Brotherhood of Maintenance of Way Employes that they were unwilling to increase the pay of extra gang laborers. When the dispute was submitted to mediation these carriers in granting authority to the Carriers' Conference Committee to represent them in mediation specifically excluded from their authorization extra gang laborers. This exclusion was incorporated in Appendix B of the Mediation Agreement of Aug. 5, 1937. Carriers contend that when the Brotherhood agreed to exclude extra gang laborers from the said Mediation Agreement it agreed that the rates of pay of these employes would not be increased and that Appendix B constitutes a binding agreement to that effect.

Petitioner admits that the Conference Committee appointed by the Brotherhoods to represent the employes in mediation did not represent extra gang laborers employed by these carriers and that they are not covered by the Mediation Agreement of Aug. 5, 1937. Petitioner denies, however, that in agreeing to exclude said extra gang laborers from said Mediation Agreement it agreed that the rates of pay of these employes would not be increased or that the exclusion of these employes from representation in mediation took from them any rights they may have under other prevailing agreements. As pointed out above, Petitioner rests its claim in this case upon paragraph 2 of the Mediation Agreement of April 18, 1935, which it contends is still in effect.

The effect of the exclusion of extra gang laborers employed by these carriers from the Mediation Agreement of Aug. 5, 1937, presents a controversy that clearly is not within the jurisdiction of this Board. There is no doubt that carriers' purpose in excluding extra gang laborers from said Mediation Agreement was to avoid increasing the pay of these employes. Whether that result was accomplished by the manner in which the matter was handled is a question over which the Mediation Board has exclusive jurisdiction. The controversy calls for an interpretation of the meaning and effect of the reservations contained in Appendix B. No determination of facts are involved for they are all known and adequately shown by the record in this case.

The question here presented is in many respects similar to the controversy that arose between the Brotherhood of Railroad Signalmen of America and the New York Central Lines over the meaning and application of Item 2 of the same Mediation Agreement. That controversy was taken to the Mediation Board and an interpretation secured (See Interpretation 4 of Mediation Agreement Case A-395). The dispute remaining after said interpretation was secured was then brought to this Board and was disposed of by Award 854. The same procedure should be followed in this case.

Some doubt arises as to what disposition should be made of this case at this time. In Docket CL-115, Award No. 90, where a similar situation developed the Board dismissed the case without prejudice to the rights of either party. Action of that character does not seem appropriate in this case for the reason the interpretation of the Mediation Board may not dispose of the entire dispute. It is believed to be more appropriate procedure to remand the case to the parties with the right to bring it back to this Board failing final agreement and adjustment of the claim.

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 case should be remanded to the parties for further handling in accordance with this Opinion.

AWARD

Case remanded in accordance with Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 27th day of July, 1939.