Award No. 1010
Docket No. MW-960

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Wiley W. Mills, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

GREAT NORTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: "Claim of Employes' Committee that all monthly rated employes, laid off from December 23rd, 1938 to January 3rd, 1939, under instructions from the Management, shall be paid the difference between the amount received and their monthly rate."

EMPLOYES' STATEMENT OF FACTS: "With circulars giving line-up of Bridge and Building crews for the last of December, 1938 and otherwise, instructions were issued for foremen and other employes of most of the Bridge and Building crews to lay off from December 24, 1938 to January 3, 1939, inclusive. Protest against short lay-off of monthly rated employes was presented to the Carrier on December 22nd, 1938."

POSITION OF EMPLOYES: "Bridge and Building Foremen, Assistant Bridge and Building Foremen, and certain machine operators, are paid a monthly rate based on 204 hours per month. Schedule Rule No. 48, governing Supervisory employes, reads as follows:

> 'Employes whose responsibilities or supervisory duties require service in excess of the working hours or days assigned for the general force, will be compensated on a monthly rate to cover all services rendered, except that when such employes are required to perform work which is not a part of their responsibilities or supervisory duties, on Sundays, holidays, or in excess of the established working hours, such work will be paid for on the basis provided in these rules, in addition to monthly rate. For such employes, now paid on an hourly rate, apply the monthly rate determined by multiplying the hourly rate by 204. Section foremen required to walk or patrol track on Sundays and holidays, shall be paid therefor on the basis of provisions contained in Rule 41 (a).'

"As provided in this rule, supervisory employes are required to render certain services outside of regularly established working hours for the general force, such as keeping time, making reports, etc., for which they receive no extra compensation. As compensation for such miscellaneous service for which overtime does not apply the rule provides that they shall be paid a monthly rate. In that the rule provides for a monthly rate, we maintain that they should not be laid off for a short period and docked, as was done in this case, but that they be assured of the agreed to monthly rate whenever they are available, ready and willing to render service.

"Machine operators are required to render certain services, such as making reports, etc., outside of their regularly assigned working hours for which they are compensated by a stipulated monthly rate. Therefore, we

"The Position of Employes quotes a sentence from the Opinion of Board in Award 759, reading: 'The agreement between the parties is for the employes to be available to perform such work as might be demanded of them, and for the Carrier to pay them a stipulated sum per month'; but it completely ignores the premise in the same opinion that the employes there referred to are 'not paid overtime for work outside their fixed hours and being required to be available at all times during the month.'

"In conclusion, the Carrier repeats its original contention that an affirmative award under the submission as made is entirely improper in that such submission fails to give any specific information upon which to make an award, or for the Carrier to reply thereto. Insofar as the general argument as to rules is concerned, the Carrier further submits that Rule 48 is inapplicable to the claim, in that its wording specifically eliminates its application to any of the classes of employes mentioned in the Position of Employes; that such Position of Employes discusses a class of employes not mentioned in the Statement of Facts, and regarding whom there is no evidence of having been laid off; and that the entire submission is so worded as to invite a purely hypothetical interpretation based on unspecified circumstances.

"The Carrier had previously protested to the Employes as to submission to this Board of a claim so lacking in specific information, and declined to participate in a joint submission without such information; hence the Ex Parte submission by the Employes. Inasmuch as the Ex Parte submission was made immediately after such protest, and without reply thereto, the Carrier has assumed that the Employes desired to withhold any information it might have, both from the Carrier and the Board, in an attempt to secure an interpretation far broader in scope than could be based on such information if it were available. It has, heretofore, been the understanding of the Carrier that this Board would not undertake interpretation of rules, nor awards of additional compensation, upon other than actual evidence submitted; and as previously stated, there is no evidence in the Employes submission of the violation of any rule, nor any evidence of any employe being deprived of any work or compensation due him."

OPINION OF BOARD: The foregoing sets forth the claims, the positions, the facts and the contentions of the parties with reasonable fullness and accuracy.

The Railway Labor Act did not design that proceedings before the several divisions of the Adjustment Board should be technical, and if such a contention as the carrier has made in this case could be approved, the rules embodied in the definite agreement, effective December 1, 1936, where the minds of the carrier and the Brotherhood are presumed to have met, would afford little or no protection; if the carrier may disregard knowledge within its control, then the rule could be violated with impunity. The carrier not only knows what men worked, what men were upon its supervisory payrolls, but its records show exactly the days they worked. So far as the carrier is concerned, there need be no conjecture. Its time records, its cancelled payroll checks, its copies of notifications of lay-offs, its cash books and ledgers are all within its knowledge and control. It knows exactly what was paid to each of the men represented by the Brotherhood for the months of December, 1938, and January, 1939; it also knows which of the men so represented were laid off and what their monthly pay under said agreement was.

Even in technical legal pleading no such particularity would be required.

In **United States v. A. Bentley and Sons Company,** 293 Fed. 229 at 247, the Court said:

> "If the facts to be alleged are peculiarly known or presumed to be known to the opposite party, then less certainty and particularity are required than in ordinary cases."

In The State of Illinois v. Illinois Central Railroad Company, 246 Ill. 188 at 236 the Court said:

> "The rule in common law pleading is, that whenever the enumeration of particulars would lead to great prolixity a general statement is sufficient."

There is an implied agreement that men paid by the month shall be available throughout the month for such work within the scope of their employment as they may be called upon to perform.

We think Award Number 759 is persuasive in this case and from the Opinion in that case we quote two pertinent paragraphs, as follows:

> "The question in this case is as to the propriety of the carrier laying off for a few days of the month, regularly monthly rated employes not paid overtime for work outside their fixed hours and being required to be available at all times during the month whenever their services might be required, and according them only pro rata pay for the days preceding the lay-off. * * * *
>
> "In the absence of any governing provision in the schedule, the question is one of general law. In that respect it is well established by overwhelming authority that a hiring at a stipulated rate of pay for a term, will, in the absence of contrary evidence, be deemed to be a hiring for the term; thus a hiring at a weekly rate, a hiring for a week; at a monthly rate, for a month; at an annual rate, for a year. * * * "

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 carrier violated the wage agreement.

AWARD

Claim sustained to the extent claimants were not paid full monthly salaries.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 20th day of December, 1939.