

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

I. L. Sharfman, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

ST. JOSEPH UNION DEPOT COMPANY

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that the Carrier has violated and continues to violate agreement between it and this Brotherhood when it failed and refused and continues to refuse to compensate regular assigned Baggage and Mail Truck men the minimum monthly wage stipulated in agreement dated March 11, 1922 and subsequent revisions thereof, and further fails and refuses to compensate employees additionally for work performed in excess of a basic monthly assignment, also claim for reimbursement for wage losses sustained as a result of such violations."

EMPLOYEES' STATEMENT OF FACTS: "(1) The St. Joseph Union Depot Company operates a Union Passenger Depot at St. Joseph, Missouri performing service for the following named Class 1 Carriers, which Carriers own all of the outstanding stock of said Depot Company:

Chicago, Burlington & Quincy R. R. Co.,
Chicago Great Western R. R. Co.,
Atchison, Topeka & Santa Fe Ry. Co.,
Chicago, Rock Island & Pacific Ry. Co.,
Union Pacific Railway Co.,
Missouri Pacific R. R. Co.

"(2) One of the ordinary and regular functions of this Depot Company is to check and handle all Baggage and U. S. Mail between trains; between trains and depot or vice versa; between patrons (including the U. S. Post Office Dept.) and Depot and Trains.

"(3) The Baggage and Mail department, in fact the entire Union Depot, is open for business and is operated continuously twenty-four (24) hours each day of the year.

"(4) V. D. Griggs, H. E. McNutt, H. A. Wilson, Gale Smith, Leroy Ping, Ed. Smith, Robert Conway, A. O. Kellermeyer and some other eight (8) employees have been and are employed by this carrier in the handling, sorting, dispatching, routing and trucking of Baggage and U. S. Mail in and about the Union Depot.

"Seniority Roster of February 1, 1937 listing names and occupations of all employees is attached hereto as employees' exhibit 'A.'

"(5) During the period of control and operation of railroads by the U. S. Railroad Administration and during the effective period of Decision

rolls covering truckmen, for one month in each year from 1922 up to the present time, which shows conclusively that the method of computation has been uniform from the date of the first agreement and to make any change in the method of computation other than as provided in above quoted rule requires negotiation under the provisions of Section 6 of the Railway Labor Act. For the reasons herein given, it is our position that the Board does not have jurisdiction in the claim as presented.

"The carrier Management is now and always has been entirely willing to confer with the Committee on the question of converting the monthly rates to a daily basis under the provisions of the rule herein before quoted."

OPINION OF BOARD: A careful examination of the Memorandum Agreement of March 11, 1922 between the parties here in dispute, as well as of the Memorandum Agreement of January 25, 1922 and of the General Agreement effective February 1, 1922 between the Clerks' Organization and the Chicago, Burlington & Quincy Railroad Company, both of which latter agreements were made part of the Memorandum Agreement of March 11, 1922 in their bearing upon the matter here at issue, supports the conclusion that the monthly minimum wage of \$93.62 established for baggage and mail truckers on March 11, 1922, to be effective as of March 16, 1922, was designed to cover a month of 204 hours. A careful examination of the entire record further discloses that at no time subsequent to March 11, 1922 was there any express alteration, by agreement of the parties, of this basis for the application of the monthly wage, either as originally established at \$93.62, or as later increased, progressively, to \$96.00 and to \$108.17.

It appears, however, that throughout the period—that is, from March 16, 1922 to the present time—the appropriate monthly wage was uniformly applied by the carrier on the basis of full calendar months, rather than of 204 hours per month required by the Memorandum Agreement of March 11, 1922, and that not until November 20, 1936, after more than 14 years had elapsed, did the employees protest the carrier's method of applying the monthly wage. These facts, coupled with the circumstance that the agreement negotiated between the parties in dispute on February 6, 1930, whereby the earlier increase in the monthly wage of these employees to \$96.00 was incorporated in the agreement, did not deal with the matter at issue, as well as with the additional circumstance that the wage increase of August 1, 1937, couched in terms of cents per hour, was applied by the carrier to the monthly wage of these truckers on the basis of full calendar months and was accepted by the employees on this basis without protest or express reservation—all these facts and circumstances remove any just basis for the claim of the employees "for reimbursement for wage losses sustained" as a result of the violation of the Memorandum Agreement of March 11, 1922.

It has been argued, indeed, that this course of conduct on the part of the employees supports the conclusion that the Memorandum Agreement of March 11, 1922 must have contemplated the full-calendar-month basis for applying the monthly wage, since both parties accepted this basis of payment for so long a period of time. Much validity would attach to this contention if it were not for the fact that the evidence of record discloses that the carrier contributed very substantially to the laches of the employees. For most of the period here involved the carrier appears arbitrarily to have repudiated the Memorandum Agreement of March 11, 1922. Not until August 13, 1937 did it recognize that agreement, and even then it did it by indirection—merely expressing its willingness "to consider the Chicago, Burlington and Quincy Railroad rules for Clerks, Freight Handlers, Station and Storehouse employees, dated February 1, 1922 in effect." Since, of course, the only basis for this belated acknowledgment is to be found in the Memorandum Agreement of March 11, 1922, the operative agreement bearing primarily upon the issue here involved was finally accorded recognition. These facts provide a large measure of extenuation for the failure

of the employees to press the specific claim as now submitted, and hence the course of their conduct cannot properly be held, not only to deprive them of wage losses for past violations, but to change the meaning of the operative agreement in connection with its future application.

Under all these circumstances the equities of the situation will be fully met if, subsequent to the date of this award, the interpretation herein placed upon the Memorandum Agreement of March 11, 1922 will be controlling, and will be applicable to the monthly wage rates now in effect, without reparation for violations prior to that date.

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 employees involved in this dispute are respectively carrier and employees 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 Memorandum Agreement of March 11, 1922 requires that the monthly wage rates be applied on the basis of 204 hours per month, but that the evidence of record does not justify an award of reparation for past violations.

AWARD

Claim sustained to the extent of requiring that subsequent to the date of this award the monthly wage rates of baggage and mail truckers shall be applied on the basis of 204 hours per month.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 14th day of June, 1940.

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**INTERPRETATION NO. 1 TO AWARD NO. 1118
DOCKET CL-1055**

NAME OF ORGANIZATION: Brotherhood of Railway and Steamship Clerks,
Freight Handlers, Express and Station Employees

NAME OF CARRIER: St. Joseph Union Depot Company

Upon application of the representatives of the employees involved in the above award, requesting that this Division interpret the same in the light of the dispute between the parties as to its meaning and application, as provided for in Section 3, First (m), of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

Award No. 1118, as supplemented by the Opinion of the Board, required that subsequent to the date of the award the monthly wage rate of baggage and mail truckers then in effect be applied on the basis of 204 hours per month. The then-existing wage rate shown of record was \$108.17, and no adequate reason appears for departing from that rate in applying the award. It is undoubtedly true that, had the carrier recognized the 204-hour basis at the time of the wage increase of 1937, the monthly rate would have been set at \$106.20 instead of at \$108.17; but it is equally true that the 204-hour basis would then have prevailed during the intervening period, and in view of the Board's interpretation of the Memorandum Agreement of March 11, 1922 should also have prevailed during the many years preceding the wage increase of 1937. The Board concluded that both the carrier and the organization had been at fault as far as the past was concerned, and hence it accepted the status quo as a starting point and confined its order to the future. This acceptance of the status quo involved not only a denial of reparation but also a recognition of the wage rate of \$108.17 as it then existed. It seems clear, also, that the 204-hour rule was to be applied on a monthly basis, as expressly specified, instead of being reduced to a daily rate in terms of aggregate annual hours. Under these circumstances both contentions of the Clerks' Organization as to the meaning of Award No. 1118 appear to be sustained.

Referee I. L. Sharfman, who sat with the Division, as a member, when Award No. 1118 was adopted, also participated with the Division in making this interpretation.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 18th day of February, 1941.