

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Sidney St. F. Thaxter, Referee

PARTIES TO DISPUTE:

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

HOUSTON BELT & TERMINAL RAILWAY COMPANY

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

"(a) Effective November 16, 1940 the correct rate of pay for two (2) stevedore's positions is \$.5964 per hour and three (3) trucker's positions is \$.5636 cents per hour. Also

"(b) Claim that the two stevedores and three truckers be paid an additional day's pay at the pro rata rate of pay for each Sunday and holiday from November 16, 1940 until May 11, 1941, both dates inclusive. Also

"(c) Claim that all employees involved in or affected by the carrier's failure and refusal to apply correct rates of pay and assignments be compensated for all losses sustained."

There is in evidence an agreement between the parties bearing effective date of November 16, 1940.

EMPLOYES' STATEMENT OF FACTS: "In November 1940 we filed claim with the carrier requesting that memorandum agreement that became effective November 16, 1940 be made effective. The memorandum agreement reads as follows:

'With reference to agreement regarding 365 day assigned positions not necessary to the continuous operation of the carrier.

'It is agreed that all 365 day assignments, not necessary to the continuous operation of the carrier will be reduced to 306 day assignments and the rate will be adjusted so that the earnings will be the same as received for 365 days.

'This understanding shall remain in effect until changed in accordance with the terminating rule of the agreement.'

"Numerous conferences were held without an agreement being reached disposing of this claim with the result that on April 2, 1941 we advised the carrier of our intention to submit this case to the Adjustment Board for a decision. We gave the carrier our statement of claim and facts and asked that they advise if they would join us in submitting the claim to the Adjustment Board for a decision.

"The statement of claim and facts that were submitted to the carrier on April 2, 1941 read as follows:

"It is the contention of the Carrier that they did not make any agreement covering change in rates of pay or assignments of Laborers paid an hourly rate and that they were not discussed in conference at any time, and that the only agreement made and covered by my letter of May 13, 1941, addressed to Mr. J. L. Dyer, Chairman of Clerks, was applicable only to clerical employees named hereinbefore and paid on a monthly rate—that agreement contained in letter did not and does not apply to the Laborers, namely, Stevedores and Truckers, who are paid on an hourly basis, and claim should be denied in its entirety."

OPINION OF BOARD: This case involves the same agreement and supplementary letter modifying the same that was involved in Award 1628, Docket CL-1635. All that we said there with respect to the agreement and the letter is applicable here. The question here relates to the application of the agreement as supplemented to hourly rated employees.

In the first place the carrier contends that the letter does not apply to hourly rated employees, but this claim can hardly be maintained in view of the agreement entered into May 13, 1941 in which the carrier, by inference if not directly, recognized that the letter agreement of October 31, 1940 applied to the "warehouse forces employed at freight house, Houston Belt and Terminal Railway, Houston, Texas." Included in the warehouse force were the three truckers and the two stevedores who are the claimants in this dispute. Moreover we held in Award 1614, Docket CL-1679 that under the terms of the letter agreement the carrier was obligated to reduce "all" 365 day annual assignments to 306 day annual assignments whether the pay was based on an hourly, a daily, a weekly, or a monthly rate. Furthermore not only did the agreement of May 13, 1941 refer to these claimants who were a part of the warehouse force, but the carrier actually reduced their assignments from 365 days to 306 days. The real question is as to the rate of pay to which they were entitled under the new assignment.

The letter of October 31, 1940 in itself would seem to leave no doubt about this and we have already in Award 1628, Docket CL-1635 interpreted it to mean that such re-assignments should be made "without a reduction in the total pay received by the employees affected." But the carrier in effect now says that the parties in the agreement of May 13, 1941 have reached a different conclusion and refers to the last paragraph of the letter which reads as follows:

"It was agreed that these positions would be reduced to 306 days per annum assignment and that no reduction will be made in the rate of pay formerly made for 365 days assignment and further that each Sunday and Holiday worked between November 16, 1940, and May 2, 1941, will be paid for at pro rata rate in addition to pay already received."

Here again the carrier relies on the letter rather than on the spirit of the writing. The carrier says that its obligation is complied with so long as the hourly rate of pay is not reduced, the result being that the earnings of the employees affected would be reduced in proportion to the reduction in the hours of their employment under the new assignments. The carrier must have known, particularly in the light of the Robstown case with which its officials were well acquainted, that such a result was never in the contemplation of the employees when through their General Chairman they signed the agreement in question. There is no reason why we must construe the agreement so as to penalize one group of employees because they happen to be paid on an hourly rate rather than by the month. The language in the letter of May 13th makes no sense unless we construe it as referring to the total earnings received by the employees because there was at that time no existing controversy as to hourly rates of pay. The agreement of May 13, 1941 must be read in connection with the letter of October 31, 1940 and from these two documents it is clear to us that it was the intention of both

parties that in all cases where the re-assignment should be made from the 365 day basis to the 306 day basis there was to be no reduction in the total earnings received by any employee.

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 agreement of October 31, 1940 is supplemental to the current agreement; that it has the same effective date, viz., November 16, 1940 and applies to the positions involved in this dispute, and that the claimants are entitled to have their hourly rates of pay increased as of November 16, 1940 so that they will receive the same earnings in the aggregate on the 306 day assignments as they received in the aggregate on the 365 day assignments.

AWARD

Claim (a) sustained; claim (b) sustained to this extent: that each employee be paid an additional day's pay at pro rata rate established by this award under claim (a), for each Sunday and holiday worked from November 16, 1940, to May 11, 1941, inclusive, less amounts actually received for regularly assigned working hours on such days; claim (c) dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 27th day of November, 1941.