

Award No. 1707
Docket No. CL-1638

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Carl B. Stiger, Referee

PARTIES TO DISPUTE:

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

ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that carrier violated the provisions and intent of Clerks' Agreement by improperly compensating Messengers E. Thorengren, R. Rosio and J. D'Hemecourt in the first half payroll period July 1940, as herein stipulated, and that Messengers Thorengren, Rosio and D'Hemecourt shall now be reimbursed for such wage loss as was sustained by each of them by reason of such violation."

EMPLOYES' STATEMENT OF FACTS: Prior and subsequent to July 1940 E. Thorengren, R. Rosio and J. D'Hemecourt were, and have been, regularly employed as Messengers at New Orleans, La.

Prior to October 24, 1939 the basic rate applying to Messenger positions here involved was \$1.92 per day or 24¢ per hour, and effective October 24, 1939 this basic minimum rate was increased by reason of Federal Enactment (Fair Labor Standards Act of 1938) establishing a minimum of 30¢ per hour or \$2.40 per day.

During the payroll period July 1st to 15th inclusive (1940), recognized as first half of payroll period for that month, Messengers Thorengren, Rosio and D'Hemecourt each worked 12 working days and one holiday, making a total of 13 days, and were paid as follows:

12 days @ \$1.92	\$23.40
1 day penalty @ \$2.88	2.88
Total	\$25.92

and to this amount was added \$5.28 making total compensation paid each employe \$31.20, the amount added being arrived at by deducting the \$25.92 from the amount that is produced by multiplying actual hours worked by the minimum rate 30¢ per hour.

The employes have contended, and now contend, that Messengers Thorengren, Rosio and D'Hemecourt for the period involved should properly be paid:

12 days @ 30¢ per hour (\$2.40 per day)	\$28.80
1 day penalty @ 45¢ per hour (\$3.60 per day)	3.60
Total	\$32.40

and there is a difference of \$1.20 now due each employe for the payroll period here involved.

As the Carrier has fully complied with its obligations under the terms of its schedule agreement, the instant case is devoid of merit and should be declined without qualification.

OPINION OF BOARD: The provisions of Section 6 of the Fair Labor Standards Act of 1938, material to this dispute, require the Carrier to pay the messengers wages at the rate of not less than 30¢ per hour.

Rule 42 of the Clerks' Agreement, effective June 23, 1922, provides that work performed on Sundays and certain legal holidays, including the Fourth of July, shall be paid at the rate of time and one-half.

The rate in effect at the time the Federal Act became effective was 24¢ per hour, or \$1.92 per day.

On July 4, 1940 the Carrier paid the messengers time and one-half at the so-called basic rate of \$1.92 per day or \$2.88.

The Organization contends that claimants were entitled to time and one-half at the 30¢ per hour minimum rate, or \$3.60.

The position of the Carrier is that the Act did not affect existing agreements, did not affect the basic rate of 24¢ or the contract overtime payment provision; that the basic rate of 24¢ continued after the Federal Act until changed by negotiation; that the Carrier has refused to enter into an agreement to change the basic rate and that it was in full force and effect on July 4, 1940; that the Federal Act only requires the payment of the minimum hourly rate without reference to the overtime provision; that the payment of \$2.88 as time and one-half was more than the minimum hourly rate and thus the payment met the requirements of the Act.

In Docket CL-1739, Award 1706, the Board ruled adversely to the Carrier's contention that the Federal Act did not affect or change a similar basic wage agreement and that the Carrier satisfied the Act by paying 30¢ per hour for the total number of hours worked during the work-week.

The Federal Act raised the rate for the low rate position of messenger from 24¢ per hour to 30¢ per hour—the wage agreement was modified to that extent.

The Carrier under Rule 42 agreed to pay time and one-half for work performed on the Fourth of July, that is, it was obligated to pay the hourly wage plus one-half thereof. The hourly wage at the time in question was 30¢ per hour.

The Federal Act does not deprive the messengers of the benefit of the overtime provision in the agreement. It substituted the minimum rate for the contract rate of 24¢ as a basis for computing time and one-half under Rule 42. It does not permit the Carrier to reduce the employee's reward for working overtime by computing the amount thereof on an hourly wage that violates the Act.

The contention of the Carrier that it did not violate the contract because the time and one-half paid the messengers in the sum of \$2.88 was more than the minimum hourly wage fixed by the Act must be denied.

The payment of overtime on the basis of 24¢ per hour violated the agreement.

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 proper rate of pay for the messengers on July 4, 1940 was \$3.60 each and that they are entitled to recover their wage loss.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 12th day of February, 1942.