Award No. 1726
Docket No. MW-1765

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward M. Sharpe, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

THE NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY

STATEMENT OF CLAIM: Claim of Employes' Committee:

First, that by charging section laborers certain amounts for occupying railroad-owned houses and deducting amounts charged from their wages, effective as of March 1, 1941, the Carrier violated current agreement, particularly Rule 43 thereof.

Second, that in conformity with Rule 43 of the current agreement, section laborers shall be permitted to occupy railroad-owned houses free of charge to them.

Third, that section laborers who have been charged rent for occupying company-owned houses and from whose wages deductions were made, shall be reimbursed in the total amount thus deducted, retroactive to March 1, 1941.

EMPLOYES' STATEMENT OF FACTS: Prior to March 1, 1941 no rent was charged section laborers occupying company-owned houses, and in conformity with Rule 43 of the agreement, section laborers were occupying company-owned houses free of charge to them.

Effective as March 1, 1941, the Carrier began to charge rent to section laborers occupying railroad-owned houses.

The agreement in effect between the Carrier and the Brotherhood of Maintenance of Way Employes is, by reference, made a part of this Statement of Facts.

POSITION OF EMPLOYES: Under date of February 14, 1941, the Administrator, Wage and Hour Division, U. S. Department of Labor, issued an Order establishing minimum wages in the Railroad Industry, from which we quote:

"Part 591—Minimum Wage Rates in the Railroad Carrier Industry."

* * *

"Section 591.2 Wage Rates.

(a) Wages at a rate of not less than 36 cents an hour shall be paid under Section 6 of the Act by every employer to each of his employes in the Trunk Line Division of the Railroad Carrier Industry who is engaged in commerce or in the production of goods for commerce;

It is the Carrier's position that the procedure herein described is right and proper under the Act, as expressly provided in sub-section (m) of Section 3 thereof. But whether Carrier's contention that it is complying with the Fair Labor Standards Act of 1938 is correct or erroneous is not a question for determination by this Division. The only question for this Division is whether the Carrier is complying with its agreement. As heretofore shown, the Carrier is fully and exactly complying with its agreement, paying the wage therein provided and also furnishing the section houses therein referred to. That the petitioner's complaint is a claim of violation of the Fair Labor Standards Act and not of the contract is completely demonstrated by the fact that except for the Fair Labor Standards Act of 1938, its interpretation and effect, the Carrier admittedly is complying with the agreement.

IV.

The Third Division in its Award 1228 of November 14, 1940, recognized that it was without jurisdiction in questions involving compliance with or violation of the "Fair Labor Standards Act of 1938," wherein the Division stated in its findings in said award: ". . . but this Board has no concern regarding the compliance with or violation of that Act."

It is the very definite opinion of the Carrier that it is fully and honestly complying with the provisions of the "Fair Labor Standards Act of 1938," and the Carrier respectfully submits that if the petitioner or any individual employe holds a contrary view this is a question to be decided by a court of proper jurisdiction and not by the National Railroad Adjustment Board or any Division thereof.

The Carrier has shown that its contractual obligations under the applicable agreement of November 1, 1940, are being fully complied with. It is therefore obvious the claim is without merit and should be dismissed.

The Carrier also reserves the right to introduce and examine witnesses in support of its position in connection with all issues in this case and to cross-examine witnesses who may be introduced by the petitioner, as well as to answer any further or other matters advanced by such petitioner in relation to such issues, whether oral or written.

In consideration of all of which, the Carrier respectfully asks, first, that the purported claim be denied and/or dismissed for lack of jurisdiction, and, second, if considered on the merits, that it be denied in all respects.

OPINION OF BOARD: There is no dispute as to the facts in this case. The carrier admits that it charged section laborers who received less than 36¢ per hour all money earned by such employes over 35¼¢ per hour for house rent.

The Petitioner relies upon Rule 43 of the current Agreement to sustain its position, which rule provides:

"Rule 43—Houses

> "Section and yard foremen, assistant foremen and section laborers will be permitted to occupy, without charge, houses provided by the railway for this purpose. Where no such houses are owned, the railway will rent, at its own expense, houses equal to its standard houses, in respectable localities, **for section and yard foremen and assistant foremen with families."** (Emphasis supplied.)

and contends that the wages of these employes became 36¢ per hour on March 1, 1941, and as there has been no change in the rules the carrier was obligated to pay this class of employes the legal rate of pay of 36¢ per hour, and furnish house free in accordance with Rule 43.

It is the position of the carrier that the effective date of the Wage Order of the Administrator of the Fair Labor Standards Act was March 1, 1941 and that subsequent to such date the carrier under sub-section (m) of Section 3 of the Fair Labor Standards Act has included as (wages) the reasonable cost of the facilities (houses) customarily furnished to the section laborers, and has added such a reasonable cost to the agreed to rate of 35¼¢ per hour for section laborers to equal the minimum rate prescribed by the Fair Labor Standards Act; that the question of the reasonableness of such charge is for the Administrator to pass upon, and that this Board has no jurisdiction to pass upon this question.

It is well established that the function of this Board is limited to interpreting and applying the rules agreed upon by the parties. (See Award 1589), nor has this Board any concern with violations of the Fair Labor Standards Act (See Award Nos. 1228 and 1229).

It is also well established that the Federal Act modified the Agreement effective August 1, 1937 for persons who prior to that time were receiving a wage of less than 36¢ per hour. (See Award No. 1712.)

By virtue of authority of Award No. 1712, it became the duty of the carrier to pay a minimum wage of 36¢ per hour to claimants. The carrier's attempt to do this by paying the agreed wage of 35¼¢ per hour and charging for the use of the houses was a violation of Rule 43 of 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 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 Rule 43 of the Agreement effective November 1, 1940.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 26th day of February, 1942.

Dissent to Award 1726, Docket MW-1765

The undersigned disagree with the conclusions reached and know of no reasons in the facts or the law supporting the award.

/s/ R. F. Ray
/s/ C. P. Dugan
/s/ A. H. Jones
/s/ R. H. Allison
/s/ C. C. Cook