

**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**

NEW YORK CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the New York Central, Lines West, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees under agreement governing rates of pay and working conditions between the New York Central Railroad Company and the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees. Claim arises out of failure and refusal of Carrier to restore under said agreement basic rates of positions in the Auditor of Freight Account's Office, Detroit, Michigan, temporarily reduced by agreement with the Committee June 16, 1932, with the understanding that such basic rates would be restored at a later date.

Claim:—The reduction in basic rates of all positions in the Auditor of Freight Account's office at Detroit, Michigan, made effective June 16, 1932, be restored effective as of February 15th, 1935, date of Committee's first notice for the restoration of such rates.

EMPLOYES' STATEMENT OF FACTS: As of June 16th, 1932, certain basic rates of pay were effective under the agreement between the Brotherhood and the New York Central, Lines West, applying to positions in the Auditor of Interline Freight Account's Office located then at Cleveland, Ohio.

On or about June 16th, 1932, the System Committee of the New York Central, Lines West, was called in and advised by the Carrier that steps would be taken, because of loss of business and reduced earnings, to cut the force in the Auditor of Interline Freight Account's Office so as to bring about the 10% reduction in the total payroll of that office.

Recognizing the serious loss of business and reduced earnings and wishing to cooperate with the Carrier to meet that temporary situation, the Committee proposed in lieu of the general force reduction to accomplish the 10% payroll saving, which not only would have resulted in great hardship being imposed upon a large number of employees and their families but also would have reduced the efficiency in that office to the extent that work could not have been properly performed, that the reduction in the existing force be confined to a minimum and an understanding be had between the Carrier and the Committee providing for a temporary reduction in the basic rates of all positions in the Auditor of Interline Freight Account's Office with a written agreement providing for the restoration of all rates reduced when the New York Central traffic and earnings returned to levels permitting same.

and that the Board has no jurisdiction or authority to hear and determine this claim which is simply a demand for an increase in rates of pay.

Therefore, the Carrier respectfully submits that the claimants are not entitled to recover and respectfully requests your Board to dismiss the claim.

OPINION OF BOARD: In June of 1932 the General Auditor of the carrier addressed a letter to the Auditor of Interline Freight Accounts requesting an immediate study to determine in what manner a ten per cent reduction in pay roll could be made. The matter was taken up by the Auditor of Interline Freight Accounts with the General Chairman of the Brotherhood representing the employes affected. The carrier proposed to accomplish its purpose by a drastic reduction of force. At the suggestion, however, of the General Chairman the force reduction was made much less drastic, and there was an agreement on a ten per cent reduction in pay.

The claim of the System Committee now is that there was an accompanying oral agreement that the basic rates would be restored when increased business and earnings of the carrier would permit. It is contended that under the terms of this agreement such restoration should have been made effective February 15, 1935.

Neither the written record nor the circumstances under which the original agreement for reduction of pay was made give any warrant for holding that there was a binding agreement enforceable by this Board to restore the basic rates. The lack of definiteness about the understanding, the long investigation, which would be necessary to determine whether the railroad earnings would be in such a condition as to justify the restoration of the old rates, would of themselves indicate that the settlement of the question was to be left to discussion between the parties, and, failing agreement, to mediation as provided in the Railway Labor Act. Most significant of all is the unsigned memorandum which the Brotherhood claimed embodied the understanding of the parties. It reads in part:

"It was agreed subject to the approval by the Management of the New York Central R. R. that whenever increased business and earnings in the future will permit, joint consideration will be given restoring the basic rates of pay prevailing prior to June 16th, 1932, on such positions warranting such consideration."

The term "joint consideration" contemplates the negotiation by the parties of a new agreement, applicable in this instance not to all the positions on which rates had been reduced, but "on such positions warranting such consideration." This memorandum conclusively refutes the claim that there was any definite agreement which could be enforced by this Board.

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 record establishes no violation of any agreement.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 19th day of May, 1942.