Award No. 2207
Docket No. DC-2145

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

H. Nathan Swaim, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYES

CHESAPEAKE AND OHIO RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the Joint Council Dining Car Employes, Local No. 495, for and in behalf of certain Dining Car Employes, as a result of carrier's violation of our agreement, particularly Rule 16, paragraphs (b) and (c) thereof, by establishing a charge for board and lodging and deducting such charge from the wages of employes involved, and that all Dining Car Employes so affected and from whose wages deductions were made for board and lodging in violation of Rule 16, shall be reimbursed in the total amount thus deducted retroactive from March 1, 1941 to August 31, 1941, inclusive.

EMPLOYES' STATEMENT OF FACTS: The Agreement between this Carrier and its Dining Car Cooks and Waiters, effective April 16, 1938, provides in Rule 16, paragraphs (b) and (c):

"(b) Present practice of furnishing lodging places at away-from-home-terminals will be maintained, and the employes will cooperate with the management in keeping lodging places in a clean and sanitary condition.

"(c) Present practice of providing free meals while on duty in dining cars will be continued by the management."

Rule 2 of the agreement captioned "Rates of Pay" established the rates for Dining Car Waiters as follows:

"Waiters

5 yrs. service		Under 5 years service	
Per month	Pro rata Per hour	Per month	Pro rata Per hour
72.50	.31	70.20	.29"

Effective October 24, 1938 by automatic operation of the "Fair Labor Standards Act" a minimum hourly rate of 30 cents per hour was established for all industries engaged in Commerce or the production of goods for commerce. This rate obtained in the railroad carrier industry until March 1, 1941.

Effective March 1, 1941, the Administrator, Wage & Hour Division, United States Department of Labor, acting upon the recommendation of Industry Committee No. 9, issued a "Wage Order" from which we quote in part as follows:

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

so-called non-operating groups, that is to say, 9¢ per hour ($21.60 per month) effective September 1, 1941, to November 30, 1941, and 10¢ per hour ($24.00 per month) effective on and after December 1, 1941. Comparison of the rates established by the agreement of April 16, 1938, with the rates established by the supplementary agreement of January 6, 1942, will demonstrate that the 9¢ per hour and the 10¢ per hour increases were in every case applied to the **basic rates set forth in the agreement of April 16, 1938,** and **not to minimum wages under Section 6 of the Fair Labor Standards Act.** In other words, the minimum rate for waiters under the agreement of April 16, 1938, was 29¢ and the rate under the agreement of January 6, 1942, is 39¢. This makes it crystal clear that the rates of the agreement of April 16, 1938, were the basic rates used and not the 36¢ minimum provided by the Act. Thus any contention that the statutory minimum has been imported into the contract as the basic contract rate is shown to be squarely in the teeth of the supplementary agreement of January 6, 1942, entered into after the Fair Labor Standards Act and the 36¢ minimum had gone into effect.

It must be apparent to the Board that Congress did not intend by the enactment of the Fair Labor Standards Act to alter or amend existing contracts. Indeed, it could not constitutionally do so. The unmistakable intent and purpose of the Act was to establish certain minimum standards, failure to meet which would involve the delinquent, not in a breach of contract, but rather in a violation of the law irrespective of any contract. The Act requires payment of certain minimum wages, cost of board and lodging, properly determined, to be counted as wages. If this standard be met the law is fully satisfied and the remaining rights of the employe are to be predicated upon his contract as written. If a given money wage plus an allowance for board and lodging will satisfy the statutory standard and the same money wage without an additive for board and lodging will satisfy a contractual standard, both the law and the contract are complied with. Such is the gist of the situation here. Your Board's concern is that the contract shall have been complied with. Demonstrably, it has been. We repeat, the claim is clearly without merit.

The employes have referred in conference to Award 1726. With all due deference, it is submitted that Award 1726 was clearly in error in establishing as a contract rate the minimum wage provided in Section 6 of the Fair Labor Standards Act and disregarding entirely Section 3 (m) of that Act defining minimum wages. But right or wrong Award 1726 cannot be controlling so far as this carrier is concerned, because in this case the employes, by the supplementary agreement of January 6, 1942, contracted for increases based upon contract rates lower than the then effective statutory minimum wage.

It is of the first importance, we submit, for the Board to recognize that the Fair Labor Standards Act does not establish minimum **rates of pay but,** in contradistinction from minimum **rates,** the Act does establish minimum **wages.** And by definition, board and lodging are included in the statutory **wage.** Hence, if the minimum **wage** is to be imported from the statute into the contract the only thing that can be imported is the wage defined in the Act. Therefore, if the wage is to replace the contract rate, the replacement necessarily ousts the contract provisions for free lodging and meals. We do not argue for this result, but insist that both the law and the contract as written remain in effect and must be respected. But if, perchance, the provisions of Section 6 of the Act are to be imported, then of necessity the definition in Section 3 (m) of the thing dealt with in Section 6 must be imported along with it. Otherwise, the Board would be in the position of rewriting, not only the contract, but the statute as well.

OPINION OF BOARD: The questions presented by this claim are the same as those presented by the claim in Docket No. DC-2135, decided by Award No. 2206. For the reasons assigned in that award we hold that this claim discloses a violation of the Agreement by the carrier.

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 paragraphs (b) and (c) of Rule 16 of the Agreement by charging the employes for meals and lodging furnished.

AWARD

The claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 11th day of June, 1943.

Dissent to Award No. 2207, Docket No. DC-2145

We dissent to this Award for the reasons stated in Dissent to Award 2206.

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