

Award No. 2684

Docket No. CL-2683

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

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

**GULF COAST LINES, INTERNATIONAL-GREAT NORTHERN
RAILROAD COMPANY, SAN ANTONIO, UVALDE & GULF
RAILROAD COMPANY, SUGARLAND RAILWAY COMPANY,
ASHERTON & GULF RAILWAY COMPANY**

(Guy A. Thompson, Trustee)

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

(a) Effective March 16, 1943, the correct rates of pay for the positions listed below are the rates shown opposite each position:

POSITION	LOCATION	CORRECT RATE OF PAY
Ticket Clerk-Cashier	Houston	\$7.66
Ticket Clerk-Accountant	"	7.66
Depot Passenger Agents (2)	"	6.68
Ticket Clerk	Palestine	7.25
Ticket Clerk	"	7.10. Also

(b) Claim that the Carrier be required to make the above rates effective as of March 16, 1943, plus any general wage increases applicable.

EMPLOYEES' STATEMENT OF FACTS: On October 14, 1942, request was filed with the Assistant General Manager for an increase in the rates of pay of the two ticket clerks at Palestine.

This matter was in the process of handling for a considerable period of time, and during conference March 3, 1943, an understanding and agreement was reached to increase these two positions 90¢ per day, and on March 5, 1943, the Assistant General Manager confirmed that understanding and agreement. His letter reads as follows:

"At Harlingen, Texas
March 5, 1943

Mr. J. L. Dyer
General Chairman, B. R. C.
Houston, Texas

Dear Sir:

Conference Palestine March 3.

B. R. C. Case 70-42—Request rate of pay Ticket Clerks,
Palestine Passenger Station, be in-
creased.

Carrier would be glad to discuss the matter further with him. Mr. Dyer declined any further discussion of the matter and assumed the attitude that the Carrier was making a further effort to repudiate "a definite agreement made to increase the rates of the six positions," and took the arbitrary position that if the Carrier did not advise him "within the next ten (10) days, that the increased rates will be made effective as of March 16, 1943, we will submit the case to the Adjustment Board." The effect of that attitude on the part of the Employees in declining any further discussion of the matter definitely closed the issue insofar as the Carrier was concerned. The Carrier was not a party to the application submitted October 1, 1943 on which the Labor Panel's letter of October 14, 1943 was based and to date has not been furnished a copy of that communication by either the Employees or the Labor Panel, and, therefore, the Carrier does not recognize any obligation to comply with the request of the Employees based on the advice contained in letter from the Labor Panel under date of October 14, 1943.

(12) The Employees' ex parte application to the Labor Panel under date of October 1, 1943 was obviously in contravention of the Panel's instructions to the Carrier under date of July 2, 1943, and the action of the Labor Panel in passing upon that application with their letter of October 14, 1943 was also contrary to the position taken by the Panel with the Carrier as set forth in the Panel's letter to the Carrier under date of July 2, 1943.

In the light of the foregoing facts and circumstances set forth in this submission it is the position of the Carrier that the request of the Employees should be dismissed and the claim, which is without basis under any agreement between the Carrier and the Brotherhood of Railway and Steamship Clerks, accordingly denied.

OPINION OF BOARD: The record in this case shows that on June 2, 1943, the carrier and the organization prepared and signed a joint request to the National Railway Labor Panel requesting approval of an increase in the rate of pay of the positions held by the claimants to the amounts which they now claim. This request shows that it was pursuant to an agreement between the carrier and the organization. Due to the fact that the statements contained in the request did not show that the case was one over which the National Railway Labor Panel had authority to act, it withheld approval and notified the parties of its action. Thereupon the organization furnished additional evidence to the Panel with the result that the Chairman of the Panel informed the parties that the increases in pay asked for were proper to be made without the approval of the Panel. The organization thereupon requested the carrier to comply with its agreement and, upon its refusal to do so, brought the matter to this Board.

The carrier contends that it made no agreement but merely consented to submit the question of pay increases for claimants' positions to the National Railway Labor Panel for determination under the Wage and Salary Stabilization Program. The facts do not justify such a conclusion. The carrier itself stated in the application that an agreement had been entered into increasing the daily rate of pay of the positions occupied by the claimants to the amounts they now claim. Without the agreement the application to the National Railway Labor Panel was a useless and vain thing. In judging a person's intentions by his actions, the presumption is that he does not do vain things. We do not think the carrier can now say that no agreement was made.

Carrier further urges that it had no knowledge of the facts which the organization presented in securing a statement from the National Railway Labor Panel that its approval of the agreement was not required and that it disagrees with the facts upon which the Panel acted. This is not a defense available to the carrier. The power to decide that question was in the National Railway Labor Panel and their decision was binding upon the parties whether they agree with the findings of that tribunal or not.

The parties made a valid and binding agreement which they thought could not be placed in effect until approved by the National Railway Labor Panel. No approval of that board being necessary, the agreement became effective when the negotiations between the carrier and the organization were concluded. We think the carrier was clearly in error in failing to carry out the agreement under the circumstances here shown.

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 agreement of June 2, 1943, is a valid and enforceable agreement and that the carrier has violated the agreement as contended by claimants.

AWARD

Claim (a and b) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 30th day of October, 1944.