Award No. 3756
Docket No. MW-3736

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

H. Nathan Swaim, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

LEHIGH VALLEY RAILROAD COMPANY

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

(1) That under the application of Schedule Rule 4-c, the monthly salary established for employes listed therein cannot be reduced or paid in part during a month, but must be paid in full for the entire month whenever the employe is ready and prepared to render service in the classification of service to which such monthly rate is applicable;

(2) That Joseph Bologosh, crane operator, Lehighton, who under the application of Rule 4-c paid a monthly rate and whose service as crane operator, as well as the monthly rate applicable, was terminated on March 24, 1945, shall be paid on the basis of the applicable monthly rate for the entire month of March, 1945;

(3) That Joseph Bologosh who, on March 25, 1945, was obliged to displace an employe in a lower rank, shall be paid the difference between what he received working in such lower rank and that which he should have received at the salary applicable as crane operator for the days that he worked in such lower rank, from March 25 to 31, 1945.

EMPLOYES' STATEMENT OF FACTS: Joseph Bologosh was employed as a crane operator on the Lehigh Valley Railroad. During the month of March, 1945, Mr. Bologosh worked in that classification from March 1 to March 24, 1945, both dates inclusive. Effective March 25, 1945, the Carrier discontinued the use of the crane to which Mr. Bologosh was assigned and he, in accordance with the provisions of the effective agreement, displaced a section laborer. In allowing Mr. Bologosh pay for services rendered during the month of March, 1945, the Carrier paid him from March 1 to March 24, 1945, both dates inclusive, at the crane operator's rate, and for time worked subsequent to March 24, 1945, he was paid at the rate applicable to section laborers.

Agreements dated February 15, 1938, as revised April 15, 1944, and amended December 16, 1944, are by reference made a part of this Statement of Facts.

POSITION OF EMPLOYES: Effective February 15, 1938, an agreement was reached between the Carrier and the Brotherhood of Maintenance of Way Employes, containing therein a rule providing for the method of payment to certain employes, which was identified as Rule 4-c-1. This rule provided as follows:

It was not the intent of the parties when the rules of the currently effective agreement were negotiated that such an interpretation of Rule 4-c was contained therein, and if this was so, the parties would have so stated. The rule provides for classification of positions to be paid a monthly salary and establishes the basis on which such monthly salary shall be paid, and provides additional payment when required to render service on Sundays and the seven recognized holidays and for work performed or held on duty in excess of eight hours per day, etc.

There is no more reason for paying a claim of this kind than there would be to say to Management they could ont abolish an established position after a position was once established. The rule relied upon by the Employes does not deny Management the right of abolishing positions at any time during a month, and it does not specify requirement for paying an individual a full month's salary in the event a position is abolished during the course of any month. It has always been the prerogative of Management to decide the number of and the classification of positions it requires for the economical operation of its railroad, and because there was no crane operator work to be performed after March 24, 1945, the claimant's position in this dispute was abolished. The claim as presented by the organization is an attempt to establish a basis of payment that is not contemplated within the provisions of the existing rules.

The Carrier maintains that the rule relied upon by the Employes does not support the claim in this case, and there are no grounds to justify the payment requested. Therefore, this claim should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The Claimant, Joseph Bologosh, was a crane operator, who, under Rule 4-c, was "working on a monthly basis". On March 25, 1945, the Carrier discontinued the use of the crane and for the remainder of that month the Claimant worked as a section laborer and received pay at section laborer rate.

The Organization contends that Rule 4-c, which provides that those who are "working on a monthly basis will be paid a monthly salary", was violated by the Carrier in so discontinuing the use of the crane and refusing to pay Claimant at the crane operator rate for the remainder of the month.

The parties agree that the previous Rule 4-c, effective February 15, 1938, "provided a flat monthly salary * * * without payment for overtime and without deduction account curtailment in hours worked" and also that "the use of the phrase 'working on a monthly basis' clearly indicates the understanding of the parties that the month was the unit of employment for such employes under the rule".

The Carrier, however, contends that by the changes in Rule 4-c in the Agreement effective December 16, 1944, the Brotherhood took these men off a "flat monthly rate" in consideration of their being given payment for overtime. The language of the two rules, if considered alone, lends much force to Carrier's contention.

However, from a consideration of the negotiations of the parties which preceded the adoption of the rule and the statements and proposals of the Carrier made at that time we are forced to conclude that the parties at the time of the adoption of the latter rule still intended that these employes who were working on a monthly basis should be paid a monthly salary based on 204 hours per month with payment for overtime under specified conditions; and that the month was still the unit of employment.

In December, 1944, after it had been agreed to pay these employes for overtime, the Carrier submitted a proposal to incorporate into the rule a provision that, "Positions paid on a monthly basis may be established and discontinued at any time during the month, and employes occupying such positions paid for time worked." The Carrier also proposed the following provision: "Operators of mechanical equipment paid on a monthly basis may

be laid off or returned to their former position in accordance with seniority when work is completed * * * and paid for the time worked in the position." Neither of these provisions were necessary if the rule as written permits a position to be discontinued by the Carrier during the month. Neither proposal was accepted by the Brotherhood.

In its application to the Wage Stabilization authorities for approval of the proposed change in the Rule, the Carrier stated that the reason for the change was to eliminate the inequality between its monthly rated employes and such employes of the majority of the railroads of the territory. In the application the Carrier stated that under the proposed rule the monthly rated employes would "be paid a flat monthly salary" with overtime under certain conditions.

In its original submission Carrier based its entire argument on its contention that the position had been abolished and that the Rule did not prevent Carrier from abolishing the position. If the employe under this Rule was given a contract of employment for a month the Carrier could not shorten the term of that employment by its own action.

In Carrier's Oral Argument its chief contention is that the Brotherhood deliberately traded the guarantee of a flat monthly salary for overtime pay. This contention is contradicted by the Carrier's representation to the stabilization authorities of the provisions of the proposed agreement and also by its proposals for additional provisions to the rule which would permit it to discontinue positions during the month.

We are of the opinion that in view of the above we must interpret this rule as providing for a monthly unit of employment and for the payment of salary for a month in those cases where the employe starts the month and is ready, able and willing to complete the work for the month.

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 the Agreement as claimed.

AWARD

Claims (1), (2) and (3) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 19th day of January, 1948.