

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

H. Nathan Swaim, Referee.

PARTIES TO DISPUTE:

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

THE LAKE TERMINAL RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the Carrier violates the provisions of the Mediation Agreement of April 4, 1946, when it refuses to apply the increase provided therein to an employe at Lorain, Ohio, and

That Carrier shall now compensate employe Sensback for wage loss sustained by reason of its arbitrary refusal to properly apply the provisions of said National Mediation Agreement.

EMPLOYEES STATEMENT OF FACTS: On March 26, 27, 28, 29, 1946, employe Sensback was breaking in on Weighmaster position at No. 6 scale for which service he was paid a rate of 65c per hour. On May 1, 2, 4, and 6th, he was breaking in on Weighmaster's position at No. 8 Scale for which he was paid a rate of 65c per hour. Effective January 1, 1946, an increase in wages was granted railroad employes covered by Mediation Agreement dated April 4, 1946. Carrier has refused to increase the rate of 65c by the increases accorded under the National Mediation Agreement.

POSITION OF EMPLOYEES: There is in effect a Mediation Agreement dated April 4, 1946, and which Agreement reads in part as follows:

"IT IS HEREBY AGREED:

Section 1. That, effective January 1, 1946, all hourly, daily, weekly, monthly and piece-work rates of pay for employes covered by this agreement will be increased in the amount of sixteen cents (16c) per hour applied so as to give effect to this increase in pay irrespective of the method of payment. The increase provided for in this section shall be applied as follows:

(a)—Hourly Rates—

Add sixteen cents (16c) to the existing hourly rates of pay.

(b)—Daily Rates—

Determine the equivalent hourly rate by dividing the existing daily rate by the number of hours comprehended by the daily rate. Sixteen cents (16c) per hour multiplied by the

Rule 46 of Agreement with the Brotherhood of Railway and Steamship Clerks reads as follows:

"Basic Rates of Pay

Basic rates of pay now in effect shall become a part of this agreement, provided, however, that the company shall have the right from time to time to increase rates of pay for any one or more of its employes, free from any restrictions imposed by the terms of this Agreement. Any such increase when granted shall establish a new basic rate of pay for the position affected, except when otherwise agreed to by the Company and the General or Local Chairman."

The Basic Rates of Pay were furnished the organization in accordance with this rule, but a student or breaking-in rate was not included, with no exception ever having been taken by the Brotherhood. Therefore, the carrier feels the Brotherhood must have considered the student or breaking-in rate in the same manner as the carrier; i.e., simply something given to the employe while he is attempting to qualify for a position and thereby better himself.

For the reasons herein outlined the carrier believes the provisions of the Mediation Agreement of April 4, 1946 were not violated, and submits that the claim should be denied.

OPINION OF BOARD: The Mediation Agreement between the Carrier and the Brotherhood, effective January 1, 1946, provided as follows:

"It is hereby Agreed:

Section 1. That, effective January 1, 1946, all hourly, daily, weekly, monthly and piece-work rates of pay for employes covered by this agreement will be increased in the amount of sixteen cents (16c) per hour applied so as to give effect to this increase in pay irrespective of the method of payment. The increase provided for in this section shall be applied as follows:

(a)—Hourly Rates—

Add sixteen cents (16c) to the existing hourly rates of pay."

The agreement then provides specifically for method of application of the increase to all rates other than hourly rates.

From March 26 through 29, 1946, the claimant was not otherwise employed than "breaking in" on No. 6 Scale. On May 1, 2, 4 and 6, 1946, he worked a regular assignment on No. 1 Scale, second trick and was "breaking in" on the first trick on No. 8 Scale. For his time on these days "breaking in" the claimant was paid 65c per hour, the amount paid by the Carrier for this work prior to January 1, 1946. His claim is for 16c per hour under the Mediation Agreement for each hour spent on these days "breaking in."

The Carrier contends that the 16c per hour increase provided by the Mediation Agreement does not apply to the amount paid employes while so "breaking in"; that the claimant, in order to qualify for the position in question, had to learn the duties of the positions; that the amount paid to students or those breaking in "has hitherto not been subject to any national wage increases; that the amount so paid to employes "breaking in" was believed fair, the intention being to more or less take care of employes' expenses while "breaking in"; and "that a person when breaking in is not performing any service to the company."

We must conclude, however, that, in spite of the fact that the carrier in each case where an employe was breaking in was also paying the full pay of a trained employe on the position, it considered the breaking in or training of some value to it or it would not have paid 65c per hour for such time. It is evident that the carrier had something more in mind than a fair amount "to

more or less take care of employes expenses." The carrier paid this amount even where, as in this case, the employe was regularly assigned and drawing full pay on another trick. In such a case there would be no occasion for the carrier to pay this amount to help cover the employes expenses.

The carrier speaks of this 65c per hour as "student or breaking-in rate of 65c per hour which has been in effect sometime prior to the execution of the Agreement with the Brotherhood * * *." (Our emphasis.)

Both parties agree that this amount of 65c per hour was paid to employes breaking in prior to February 1, 1945, the effective date of the Clerks Agreement. The Brotherhood points out that between this date and the date of the Mediation Agreement there were no national wage increases which could have been applied to the "breaking-in rate."

The 16c per hour increase provided by the Mediation Agreement was a "cost of living increase." It applied to " * * * all * * * rates of pay for employes covered by this agreement. By its terms it was to be "applied so as to give effect to this increase in pay irrespective of the method of payment."

The claimant was an employe covered by the Agreement and the 65c per hour paid to him was an "hourly rate of pay." After the effective date of the Mediation Agreement 16c should have been added to that "existing" hourly rate of 65c per hour.

We are cited to Award No. 1659 as holding that where the Agreement does not cover a position and does not establish a rate of pay therefor, a claimant cannot recover for doing work belonging to such a position.

Here, however, we had an established and recognized type of work on which employes spent their time and for which they were paid an established rate per hour. The parties then entered into the Mediation Agreement providing for an increase of 16c per hour on all established rates of pay.

We must conclude that the Mediation Agreement applied to the "breaking-in rate" of pay as well as all other established rates of pay.

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

The claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 30th day of April, 1948.