

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John W. Yeager, Referee

PARTIES TO DISPUTE:

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

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees that the Carrier did not properly apply provisions of agreements dated Chicago, April 4, 1946 and Washington, May 25, 1946, by and between the participating carriers, one of which was the St. Louis-San Francisco Railway Company represented by the Carriers' Conference Committees, and its employees represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees:

1. When it failed and refused to increase the rates of pay of certain monthly rated employees by multiplying the hourly increase provided therein by 243-1/3, the number of hours comprehended by the employees monthly rate, in conformity with the terms and conditions of said wage agreement.

2. That the carrier now be required to properly apply the provisions of these agreements, namely, Section 1, paragraph (d) thereof as of the effective dates of each agreement, namely, January 1 and May 22, 1946 to the employees whose rates of pay have heretofore not been increased in conformity therewith.

EMPLOYEES' STATEMENT OF FACT: On October 1, 1945, formal notice was served upon the Frisco Management, in accordance with provisions of Section 6 of the Railway Labor Act, as amended, of the Employees' desire to change the rates of pay, effective November 1, 1945, for all employees that the Brotherhood represented on that property (Employees' Exhibit No. 1). Conferences upon the Employees' request was held with Management October 30, 1945, and while no definite decision was thereafter given by the Management declining our proposal for wage increases, they did, on November 12, advise us that the Carrier was authorizing the Western Carriers' Conference Committee to represent the Frisco properties in handling negotiations concerning our request on a concerted basis (Emp. Ex. 2-A) and the Employees' acknowledgment of the Management's decision of November 12 contained in General Chairman Andereck's letter of November 20, 1945 addressed to Assistant to Chief Operating Officer, Mr. King (Emp. Ex. 2-B).

Pursuant to provisions of agreement between the Carriers and Employees dated Washington, April 26, 1934, (Emp. Ex. 16-E) providing for conducting general wage movements on a national basis, conference committees were required to be designated to represent the Carrier Managements and similar committees to represent the Employees. Conference com-

(d) Under the January 1, 1946 agreement covering hours of service and working conditions, a number of positions formerly excepted from the agreement and paid a monthly rate to cover all service rendered were placed under all the rules of the agreement or under all the rules except promotion, assignment and displacement. The daily rate for such positions was fixed in accordance with Rule 51. List of these positions with the monthly rates in effect December 31, 1945 and the daily rates as put into effect as of January 1, 1946 is attached hereto as Carrier's Exhibit "G".

(e) Prior to 1946 the carrier did not follow any uniform practice in the amount of increase granted positions excepted from the Clerk's Agreement and paid a monthly rate to cover all service rendered. Following table shows general increases made by Conference Committee agreements with labor organizations similar to the April 4, 1946 and May 25, 1946 agreements and increases applied to positions excepted from the Clerks' Agreement on this property:

Date	Increase per Hour Applicable to Positions Covered By Agreement	This Increase per Hour Multiplied by 204 would be	Monthly Increase Applied to Excepted Positions
8-1-1937	5¢	\$10.20	\$10.00
12-1-1941	10¢	20.40	20.00
1-1-1944	9¢	18.36	21.90

(f) The employees did not prior to June 27, 1946 contend they had any right to negotiate rates of pay or adjustment in rates for employees covered by exceptions (a) and (b) to Rule 1. As a matter of fact, General Chairman, in discussing the matter with Assistant to Chief Operating Officer prior to May 31, 1946, in asking what increases the carrier would apply to such positions, stated his organization would seriously object if we gave occupant of any position listed in exception (a) and (b) more than the hourly increase provided in the Conference Committee agreements multiplied by 204 hours per month. As to their position concerning increases on these positions, see copy of letters attached as follows:

Exhibit "H"—letter May 21, 1946 from Mr. C. J. Andereck, General Chairman, Clerks' Organization, inquiring "how much the increase would be".

Exhibit "I"—letter from Assistant to Chief Operating Officer to Mr. Andereck dated May 22, 1946.

Exhibit "J"—Mr. Andereck's letter June 4, 1946 again inquiring what increase would be applied to positions covered by exceptions (a).

Exhibit "K"—letter from Assistant to Chief Operating Officer June 6, 1946 to Mr. Andereck, advising what the increases would be.

This claim should be denied for any one or all of the reasons as given in our statement of facts and position.

The employees' claim is entirely unsupported by any agreement rule and is an attempt to secure through interpretation of agreements advantages and rules that are not properly the function of the National Railroad Adjustment Board under the Railway Labor Act.

(Exhibits not reproduced.)

OPINION OF BOARD: In view of the involved problems contained in this docket and the lack of precedent concerning most of them, it appears to be necessary to a proper determination of the issues that there shall be set out rather more than the usual amount of background.

It appears that our point of beginning should be October 1, 1945. By notice on that date agreeable to the provisions of the National Railway Labor Act the Brotherhood here as the bargaining representative of the employees involved requested a change of rates of pay specifically for 27 Interstate Commerce Commission occupational groups of employees repre-

sented by it, and that all other employees represented be given equal consideration with those specifically named. The request was for an increase of fifteen (15) cents per hour. The matter of negotiations of the request of the Brotherhood was turned over by the Carrier to the Western Carriers' Conference Committee.

On November 29, 1945, this Brotherhood along with fourteen other Railway Labor Organizations entered into a Memorandum Agreement whereby a joint proposal was made for a uniform increase in pay for all employees represented by these 15 organizations on this and a large number of other properties.

This Agreement contemplated a demand for a greater increase in rate of pay for employees on this property than was made in the notice of October 1, 1945, but it did not contemplate a reduction in number and classes of employees for which increase was sought.

The Carriers involved had designated Conference Committees to deal with the representatives of these Labor Organizations. No settlement was made of that dispute between the Labor Organizations on the one side and the Carrier Committees on the other. However, on January 26, 1946, an Arbitration Agreement was entered into between the 15 Labor Organizations and the involved Carriers by their Conference Committees.

This Agreement submitted for arbitration only the question of increase in rates of pay. No question of representation was involved. The submission is the following:

"Fourth: The specific question to be submitted to the Board for decision is the request of the employees for an increase of thirty (30) cents per hour to be added to all existing rates of pay."

On April 3, 1946, the Arbitration Board rendered an Award as follows:

"The Board Awards sixteen (16) cents per hour as justified under the evidence and a uniform increase in that amount in cents per hour, applicable to all Employees parties hereto, shall be added to all existing rates of pay in accordance with said Arbitration Agreement."

On April 4, 1946, the Labor Organizations and the Carriers represented by their Conference Committees entered into an agreement embodying the rate of increase fixed by the Arbitration Award and making it effective as of January 1, 1946. This Agreement contained the following:

"(d)—Monthly Rates. Determine the equivalent hourly rate by dividing the existing monthly rate by the number of hours comprehended by the monthly rate. Sixteen cents (16¢) per hour multiplied by the number of hours comprehended by the monthly rate shall be added to the existing monthly rate."

The Labor Organizations, not being satisfied with this increase, the matter of further increase was submitted to the President of the United States. On his recommendation a further increase of two and one-half (2½¢) cents per hour was agreed to. Pursuant thereto an Agreement was entered into on May 25, 1946, effective May 22, 1946.

This Agreement contained the following:

"(d) Monthly rates—two and one-half (2½¢) cents per hour multiplied by the number of hours comprehended by the monthly rate shall be added to the existing monthly rate."

The increased rates of pay provided for in these two Agreements were not applied on this property to the group of employees on whose behalf the claim herein has been made. It is the contention of the Brotherhood that they should have been applied to the group involved. On the other hand, the Carrier contends that they should not.

The employees involved in the claim are all covered by the Scope Rule of the Agreement. However, by the terms of the Scope Rule one portion of them is excepted from all of the rules except Rules 1, 25, 66 and 78 (and Rules 26 to 31 inclusive, conditionally). These in the order given are the Scope Rule, the Seniority Rule, the Change of Residence Rule, and the Effective Time Coverage and Revision and Modification Rule. The other portion is excepted specifically from the Promotion, Assignment, Displacement and Overtime rules. The entire group is therefore excepted from the Promotion, Assignment, Displacement and Overtime rules.

Obviously under the controlling Agreement prior to the two Agreements referred to granting the sixteen (16¢) cent and two and one-half (2½¢) cent increases the Brotherhood had, because of the exceptions contained in the Agreement no control over the hours of service of all of these and no control over rates of pay of some of them.

This being true the Carrier apparently concluded that these were not properly to be included among those entitled to receive the two pay increases. Accordingly, it did not apply the increases but instead apparently divided all such excepted employees into two groups on the basis of compensation then paid. In one it placed those being paid \$200 a month or more and in the other those receiving less than \$200 a month. The compensation of those receiving \$200 or more was increased \$38.93 per month pursuant to the signing of the April 4, 1946 Agreement and \$6.17 pursuant to the signing of the May 25, 1946 Agreement. The compensation of those receiving less than \$200 was increased \$32.64 and \$5.10 pursuant to the signing of the two Agreements.

It happens that the increases to those receiving \$200 a month or more is the equivalent of sixteen (16¢) cents and two and one-half (2½¢) cents added to \$200 as a monthly rate based on 243-1/3 hours.

It also happens that the increases of those receiving less than \$200 a month is equivalent to sixteen (16¢) cents and two and one-half (2½¢) cents added to \$200 as a monthly rate based on 204 hours.

The apparent assumption of the Carrier that since these employees were excepted from provisions of the Agreement as hereinbefore set out they were not parties to and not entitled to the fruits of the two Agreements was incorrect. They were within the scope of the agreement and were referred to in the notice served on the Carrier and we have found nothing whereby they were withdrawn. The Arbitration Award does not exclude them and neither does either one of the Agreements granting an increase of pay.

The fact that the rates of pay of some of these were not controlled by any rule and the further fact that after establishment of the proper rate of pay for some of them pursuant to the two Agreements the Organizations may lose control of rates could not have had the effect to preventing the Organizations of which they are a part from petitioning for and securing for them increased rates of pay over those then or previously obtaining.

We hold therefore that the employees contemplated by the claim were parties to the two Agreements whereby the members of the Brotherhood and employees of this Carrier obtained increases of rates of pay of sixteen (16¢) cents and two and one-half (2½¢) cents per hour and that they are entitled to have those rates added to their previously existing rates.

It then becomes necessary to determine whether or not they shall apply as to a comprehended monthly rate based on 243-1/3 hours or one based on 204 hours.

In order to ascertain this it becomes necessary to look beyond the Agreement since none of its provisions are specifically and fully controlling. The record contains disclosures which have a bearing on this question.

The employees involved were by the Agreement excepted from the overtime rules. The effect of this is to say that they could be called for work

outside of the usual and customary hours of their positions without any obligation on the part of the Carrier to pay compensation in addition to their established rates of pay.

It has been stated, and of this statement no denial has been found, that in reporting to the Interstate Commerce Commission these positions are reported as being paid on a 365 day yearly basis which is the equivalent of the 243-1/3 hour a month basis. It has been stated that in reporting to the Commission on the pay of one who has worked a part of a month the Carrier reports that the compensation paid is on the fraction of the calendar month worked basis rather than on a comprehended monthly rate based on 204 hours.

It has been suggested that the method of computing the compensation of these employees on the property is the same as is used in reporting to the Interstate Commerce Commission. Neither an affirmation nor a denial of this suggestion has been discovered.

Then there is the fact already pointed out that the Carrier applied to the positions having a rate of \$200 or more the equivalent of an increase of sixteen (16¢) cents and two and one-half (2½¢) cents an hour on the basis of a 243-1/3 hour month for positions having a rate of \$200 a month, while at the same time it applied a different and lesser increase to the positions carrying a lesser rate without the two having a distinguished difference under the exceptions to the Agreement.

It is inferable that the Carrier in doing this regarded the one group as monthly rated employees with the monthly rate comprehended on the basis of 243-1/3 hours. No good reason appears why the two groups should not have been comprehended insofar as increase is concerned on an identical basis.

We think that the record sufficiently shows that increases of sixteen (16¢) cents and two and one-half (2½¢) cents an hour should be applied to all positions contemplated by the claim on the basis of a comprehended 243-1/3 hour 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 Employees involved in this dispute are respectively carrier and employees 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 claim has been sustained.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 28th day of May, 1948.