Award No. 4337

Docket No. MW-4304

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Frank Elkouri, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

GEORGIA RAILROAD

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

(1) That the Carrier violated the Wage Agreements of April 4, 1946, May 27, 1946, and September 3, 1947, by increasing the cost of rental to its employes living in houses owned by the Company;

(2) That the Carrier reduce the rental charges to its employes to the same level as they were in August 31, 1941; and that the employes affected by this violation be reimbursed for the overcharge as a result of this change.

EMPLOYES' STATEMENT OF FACTS: The Georgia Railroad is a party to the Wage Agreements of May 27 and April 4, 1946, and the Wage Agreement of September 2, 1947.

Prior to the passage of the Fair Labor Standards Act of 1938, the Georgia Railroad had been furnishing, free of charge, one or two room buildings for the use of their Negro section laborers.

After the passage of the Act, the Carrier, exercising its rights as provided for in Section 3 (m) of the Fair Labor Standards Act, began to charge these section laborers $3.00 per month for the rental of their dwellings. These rental charges were deducted from the employes' pay.

Effective November 1, 1947, the Georgia Railroad increased these rental charges referred to, from $3.00 to $6.00 per month.

The Wage Agreement of December 15, 1941, and all subsequent Wage Agreements and interpretations are by reference made a part of this Statement of Facts.

The effective Agreement between the parties to this dispute, dated December 16, 1944, and its interpretations and amendments, are also here by reference made a part of this Statement of Facts.

POSITION OF EMPLOYES: As a result of the 1941 Wage Agreement the minimum wage provided for under the Fair Labor Standards Act of 1938, was exceeded insofar as Section Laborers were concerned. The new minimum thus established became 46¢ per hour. The cooperating Brotherhoods, while negotiating this 1941 Wage Agreement, realizing that the minimum established by the Fair Labor Standards Act of 1938 had been exceeded, and further realizing that the Carriers would be in a position to increase its charges for board and/or lodging provided to certain of its employes and the

graph (h) of the various wage agreements was not violated, due to the fact that we at no time took any credit of any kind for any part of the amount per hour required by the Fair Labor Standards Act, but paid in money the amounts required by the Act.

We feel that we have shown the claim is without merit and respectfully request it be declined.

(Exhibits not reproduced.)

OPINION OF BOARD: Award 4141, recently handed down by this Board, sustained a claim similar to that involved here. Basically the same arguments were made in that case that have been made here; the lengthy opinion in Award 4141 considers these arguments and the reasoning of this Board in Award 4141 applies in the instant case. Section (2) of the Agreement of December 1, 1941, to which the parties to this dispute were both parties, provided for a minimum rate, and further provided:

> "* * * From this minimum it is permissible to make **deductions** provided for by the Fair Labor Standards Act, for the reasonable cost of any board, lodging or other facilities furnished the employes, to the extent such **deductions** were being made as of August 31, 1941." (emphasis added)

This provision of Section (2) of the 1941 Agreement has been preserved by similar language in later Agreements. Section 1 (h) of the Agreement of September 2, 1947, between these parties, provided:

> "Insofar as concerns **deductions** which may be made from the rates resulting from the increase herein granted, under Section 3(m) of the Fair Labor Standards Act of 1938, they may continue to be made to the same extent that such **deductions** were being legally made as of August 31, 1941." (emphasis added)

The practice of the Carrier from 1938 to 1941 had been to furnish houses and to make a deduction of $3.00 from the checks of employes using the houses. The Agreements, although not requiring the Carrier to furnish houses to these employes, provided that if the Carrier did furnish houses it could make **deductions** to the extent that such **deductions** were being made as of August 31, 1941. Clearly the Carrier, by contract, placed a limitation upon the extent that it could make deductions for houses furnished.

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

The Carrier violated the Agreements.

AWARD

Claims sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 14th day of March, 1949.