

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

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

FORT WORTH AND DENVER CITY RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees that:

- (1) Carrier did not properly apply provisions of agreement dated Chicago, September 3rd, 1947, by and between the participating Carriers one of which was the Fort Worth and Denver City Railway Company represented by the Carriers' Conference Committees, and its employes represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees;
- (2) When it failed and refused to increase the rates of pay of certain monthly rated employes by multiplying the hourly increase provided therein by $243\frac{1}{3}$, the number of hours comprehended by the employes monthly rate, in conformity with the terms and conditions of said wage agreement;
- (3) That the Carrier now be required to properly apply the provisions of this agreement, namely, Section 1, Paragraph (d) thereof as of the effective date of the Agreement, namely, September 1st, 1947 to the employes whose rates of pay have heretofore not been increased in conformity therewith.

EMPLOYEES' STATEMENT OF FACTS: On March 25th, 1947, formal notice was served upon the Fort Worth and Denver City Railway management, in accordance with provisions of Section 6 of the Railway Labor Act, as amended, of the Employees' desire to change rates of pay, effective April 25th, 1947 for all employes that the Brotherhood represented on that property (Employees' Exhibit A). Conference upon the Employees' request was held with management April 22nd, 1947, and management confirmed this conference by letter dated April 30th, 1947 (Employees' Exhibit B). On June 10th, 1947 the management advised that the Fort Worth and Denver City Railway Company had authorized a Western Carriers' Conference Committee to represent this Carrier along with other participating Carriers, in further negotiations of this matter (Employees' Exhibit C).

Initial conference with respect to this subject matter was held in Chicago, Illinois on June 18th, 1947.

Mediation proceedings involving our pending request commenced in Chicago, Illinois July 8th, 1947. Mediation continued without agreement being reached, whereupon the National Mediation Board proffered arbitration. The

on one basis and to employees below that figure on another. Thus, the determining factor in applying the increases to individual monthly rated positions was a salary line, instead of "the number of hours comprehended by the monthly rate" as provided for in the Conference Committee Agreement. No such situation exists in the claim presented here. The wage increase granted by the Arbitration Award was applied to the monthly rated positions in question strictly in accord with the Conference Committee Agreement of September 3, 1947, which set up "the number of hours comprehended by the monthly rate" as the determining factor in applying the increase to monthly rated positions.

With respect to determining whether the increase should apply to a comprehended monthly rate based on $243\frac{1}{2}$ hours or one based on 204 hours, the Board stated as follows in Award 3916.

"In order to ascertain this it becomes necessary to look beyond the agreement since none of its provisions are specifically and fully controlling."

In considering the issue presented here, we do not have to look very far beyond the agreement to determine the "number of hours comprehended by the monthly rate" as agreed to by the parties. Paragraph 4 of the lateral agreement which accompanied the revised agreement effective September 1, 1947 sets up the same factor, expressed in slightly different language, as the yardstick to be used in converting the monthly rates of the positions involved in this dispute to daily rates. Carrier's Exhibit No. 1 clearly shows that the number of hours used, by agreement between the parties in effecting that conversion, is the same identical number of hours used in applying the wage increase to the positions involved in the instant dispute.

From the foregoing record of facts there can be no doubt that the parties themselves have already decided the issue by agreeing as to "the number of hours comprehended by the monthly rate." There is nothing further to be decided, and no necessity for the Board to further labor the question. The claim of the Employees is completely lacking in substance or vitality and should be unequivocally denied.

(Exhibits not reproduced.)

OPINION OF BOARD: On September 3, 1947, a wage increase agreement was entered into, effective September 1, 1947. Claimants are the occupants of 20 monthly paid positions. As to them, the wage agreement provided:

"Determine the equivalent hourly rate by dividing the existing monthly rate by the number of hours comprehended by the monthly rate. Fifteen and one-half cents (15.5) per hour multiplied by the number of hours comprehended by the monthly rate shall be added to the existing monthly rate."

Par. (d), Sec. 1, Wage Agreement of September 3, 1947.

The Organization contends that the comprehended hourly rate of these positions is $243\frac{1}{2}$ hours per calendar month. The Carrier contends for the hours actually worked on each position which results in comprehended hourly rates varying from 204 to 224 hours per month.

Prior to September 1, 1947, there were many positions excepted from the existing schedule agreement including the 20 positions involved in this claim. On September 1, 1947, a new agreement became effective which placed the 20 positions here involved within the scope rule of that agreement. Ten of these positions were fully covered by the new agreement and the remainder to the extent provided in Exception C to Rule 1. Other positions which were fully excepted prior to September 1, 1947, are now partially excepted positions and shown as Exceptions A and B, Rule 1, Current Agreement.

The decision rests upon the meaning to be given to the words "the number of hours comprehended by the monthly rate." The hours comprehended by the monthly rate are to be determined from the available evidence surrounding the position at the time the wage increase was to be applied. The

nature of the evidence required to establish the number of hours comprehended by the monthly rate is discussed in Award 4060 and Interpretation No. 1 thereto. We shall apply the same rules here as were applied in that case.

The evidence shows that prior to the effective date of the wage increase agreement, the positions here involved comprehended that the monthly rate of pay was for all services rendered during the calendar month. The occupants of these 20 positions were carried on the Carrier's payroll on a calendar day basis. The increase was applied to the partially excepted positions designated under Exceptions A and B, in Rule 1, on the basis of $243\frac{1}{2}$ hours per month. We think this evidence shows by the required degree of proof that the hourly rate comprehended was $243\frac{1}{2}$ hours.

Carrier's defense is grounded on a lateral agreement entered into on July 10, 1947, and effective September 1, 1947. By this agreement, positions listed under Exception C, Rule 1, the positions here involved, were to be converted from a monthly salary to a daily rate as of January 1, 1948. This agreement further provided:

"In the conversion of basis of pay from monthly salary to daily rate for certain position because of initial application of the agreement, each position will be examined individually and, amongst other considerations, regard will be given to the number of actual hours per year the employe assigned to such position is regularly required to work."

Sec. 4, Lateral Agreement, effective September 1, 1947.

The record shows that pursuant to the terms of the lateral agreement, the Carrier did convert the positions here involved from a monthly to a daily rate of pay. The divisor used, however, was unilaterally determined by the Carrier and resulted in a dispute with the Organization as to its correctness which is still pending. We do not consider Carrier's determination of the hours comprehended at all conclusive. The method provided in the lateral agreement for its determination, is not definite and is itself subject to interpretation. We think, also, that the wage increase agreement contemplates that the increases shall be made on the basis of the evidence existing at the time they became effective. The lateral agreement, as it pertained to the positions here involved, was not effective until January 1, 1948. We are controlled by the situation existing on September 1, 1947. These conclusions are generally supported by Awards 3916, 4060, including Interpretation No. 1 thereto, and 4087. The evidence supports the position of the Organization.

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 Carrier violated the Wage Agreement effective September 1, 1947.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 30th day of June, 1949.

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

INTERPRETATION NO. 1 TO AWARD NO. 4429

DOCKET CL-4404

NAME OF ORGANIZATION: Brotherhood of Railway and Steamship Clerks,
Freight Handlers, Express and Station Em-
ployes.

NAME OF CARRIER: Fort Worth and Denver City Railway Company

Upon application of the Carrier involved in the above award, that this Division interpret the same in the light of the dispute between the parties as to its meaning and application, as provided for in Section 3, First (m), of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

The question submitted to the Third Division in Docket CL-4404 was the determination of the comprehended hourly rate within the meaning of the wage increase agreement effective September 1, 1947. In Award No. 4429 we determined that rate to be 243-1/3 hours. In other words, this is the rate upon which the wage increase of September 1, 1947, should be calculated.

It now appears from Carrier's request for an interpretation that a further dispute has arisen concerning the conversion of the monthly rate to a daily rate under the terms of the Lateral Agreement of September 1, 1947, the pertinent provisions of which did not become effective until January 1, 1948. This latter question involved matters not in dispute in Docket CL-4404, nor decided by Award No. 4429. There is no evidence in the record from which the Division could finally determine the issue sought to be determined by the request for an interpretation. It involves the interpretation of language that was only remotely connected with the issues determined by Award No. 4429.

We are obliged to say that the issue tendered by the request for an interpretation constitutes a new dispute concerning the correct daily rate of certain employes after a conversion from a monthly rate pursuant to the terms of the Lateral Agreement of September 1, 1947. Fresh disputes cannot be here decided under the guise of an interpretation merely because they follow closely in point of time. We consequently adhere to the plain language of Award No. 4429 to the effect that the wage increase of September 1, 1947, should be applied to the positions in question on the basis of a 243-1/3 hourly month. We decline to consider the issue tendered by the request for an interpretation for the reason that it is a new and independent dispute not germane to the issues presented by Docket CL-4404, or decided by Award No. 4429.

Referee Edward F. Carter, who sat with the Division as a Member when Award No. 4429 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 16th day of December, 1949.