

Award No. 4589
Docket No. CL-4384

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

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

THE LONG ISLAND RAILROAD COMPANY

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

1. The Carrier violated the provisions of the Wage Agreement of July 1, 1941, and the Agreement to protect employees engaged in military or naval services of the United States, dated March 9, 1945, when it failed and refused to grant credit to employees, who served in the armed forces, in applying step rates, and

2. Employees who returned to railroad service and to a position having step rates, within ninety days after having been released from the armed forces, shall be paid rates of pay based on the time spent in the armed forces plus any time worked on such positions prior to or after release from such land or naval service.

EMPLOYEES STATEMENT OF FACTS: An agreement bearing date of July 1, 1941, covering wages in effect between the parties to this dispute. The employees involved in this instant claim are covered by that agreement. That part of the Wage Agreement which provides for "Entering or Step Rates" reads as follows:

STATION BAGGAGEMEN		STATION CLEANERS & LABORERS	
(Entering Rate	4.75 per day	*(Entering Rate	3.60 per day
(After 1 year	4.85 per day	(After 306 days	3.68 per day
(After 2 years	5.07 per day	(After 612 days	3.76 per day
		(After 918 days	3.84 per day
STORES ATTENDENTS		CHAUFFEURS	
#(Entering Rate	.50 per hour	%(Entering Rate	.50 per hour
(After 1 year	.56 per hour	(After 1 year	.56 per hour
(After 2 years	.61 per hour	(After 2 years	.61 per hour

"NOTES:

(*) For the purpose of determining what constitutes service in calculating the number of days worked by Station Cleaners and Laborers, the following instructions will govern:

- (A) Furloughs will not break continuous service.
- (B) Employees who leave the service voluntarily or are dismissed for cause, will, if they re-enter the service be considered as new employees.

Finally, the Carrier desires to call attention to Award No. 3803 of your Honorable Board wherein the same principle was involved (whether military service should be counted in computation of step rates) and it was decided that the Claimants were not entitled to credit for time spent in the armed services in determining step rate of pay.

The Carrier, therefore, respectfully submits that the claim should be denied.

III. Under the Railway Labor Act, the National Railroad Adjustment Board, Third Division, is required to give effect to the said Agreements and to decide the Present Dispute in accordance Therewith.

It is respectfully submitted that the National Railroad Adjustment Board, Third Division, is required by the Railway Labor Act to give effect to the said Schedule of Regulations which constituted the applicable Agreement between the parties, and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First subsection (i) confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of interpretations or application of agreements concerning rates of pay, rules and working conditions." The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreement between the parties to it. To grant the claim of the employees in this case would require the Board to disregard the Agreements between the parties and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties of the Agreements. The Board has no jurisdiction or authority to take any such action.

CONCLUSION

The Carrier has established that it has not violated the agreement and that the rates of pay presently applied to the employees involved are proper.

Therefore, the Carrier respectfully submits that your Honorable Board should dismiss the claim of the employees in this matter.

Exhibits not reproduced.

OPINION OF BOARD: The Agreement provides for ascending step rates of pay for chauffeurs. After the first year's service, pay increases are required after one year and after two years' service. Claimant Ergenzinger entered the service of the Carrier on March 23, 1941. He entered military service on May 13, 1942 and was discharged therefrom on October 21, 1945. On January 14, 1946, he was assigned to the position of chauffeur and paid at the rate of 87½ cents per hour. He claims that his rate should be 98½ cents per hour under the Step Rate Agreement. Claimant Bickerton entered the service of the Carrier on September 12, 1941. He entered military service on November 2, 1942 and was discharged therefrom on February 2, 1946. On March 4, 1946, he was assigned to the position of chauffeur and paid at the rate of 87½ cents per hour. He, too, claims that he should be compensated at 98½ cents per hour under the Step Rate Agreement. Claimants contend that the time they spent in military service should be credited in determining when step rates were applicable.

The controlling Agreement is the so-called Military Agreement of March 9, 1945, which was made pursuant to Section 8(c) of the Selective Training and Service Act of 1940. The pertinent portion of this Agreement provides:

"(Employees) * * * shall, upon completion of such service in the land or naval forces, be restored to such position with this company (including rights to promotion), to which his accumulated seniority entitles him, all in accordance with the then existing rules of the Schedule Agreement, the same as if he had remained in the service * * *."

The step rate provision is something entirely separate from seniority. It provides for increased rates of pay based solely on length of service. It is here contended that the provisions of the Military Agreement requiring that time spent in military service be credited on seniority also requires that credit also be given in applying step rate provisions. There is no analogy between the two. These employes have received credit on their seniority for time spent in military service. They have received all promotions which they would have received if they had remained in Carrier's service. Pay increases have been accorded them as the Agreement contemplates. To these they are entitled. But the step rates of pay based on acquired experience is not a subject dealt with in the Military Agreement under facts such as we have before us. Ordinary military service is not chauffeur experience within the meaning of the step rate rule.

This is not a case of first impression before this Board. It was dealt with in Award 3803 and there determined adversely to the position assumed by the Claimants. The question has also been before the courts with like result. See *Huffman v. Norfolk & Western Railway Co.*, 71 Fed. Supp. 564.

It is further urged that the words "the same as if he had remained in the service" contained in the Military Agreement bring us to a different result. This very contention was decided contrary to the position assumed by the Organization in Award 3803. But in addition thereto, the Military Agreement was made pursuant to federal legislation on the subject. Its purpose was to effect a compliance with the Act. The Military Agreement must be construed, where construction is required, with that in mind. Consequently, the phrase "the same as if he had remained in the service" refers to those matters preserved to the employe under the Selective Service Act and has no application whatever to determining length of service under the Step Rate Wage Agreement. A negative award is required.

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 Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 18th day of October, 1949.