Award No. 4676
Docket No. CL-4752

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Mortimer Stone, Referee

PARTIES TO DISPUTE:

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

ST. LOUIS-SOUTHWESTERN RAILWAY COMPANY

ST. LOUIS-SOUTHWESTERN RAILWAY COMPANY OF TEXAS

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

1. That Carrier's action on or about September 1, 1947 in changing the working conditions attached to position of Chief Clerk, Record Room, Office of Superintendent of Transportation, Tyler, Texas, occupied by Mr. J. Heath Lamb, with resultant wage loss of approximately $226.32 per annum (22 eight hour days' pay in each calendar year on a daily rate of $9.54) was violative of National Railroad Adjustment Board Award 3155 and rules of our Agreement governing working conditions of the employes effective April 1, 1946.

2. That a basic rate of $10.23 per day plus the hourly wage increases provided for in National Wage Increase Agreements of 1946, 1947 and 1948 be established for this position effective September 1, 1947 to conform with Rule 35 of currently effective Agreement dated April 1, 1946.

(NOTE: Note rate of $10.086 named in "Statement of Claim" paragraph B Award 3155 was derived from a calculation of $257.21 monthly rate being in effect following the application of national wage increases in 1937, 1941 and 1944 however, it subsequently developed that Carrier had applied the 1944 hourly increase on a basis comprehending 243⅓ hours per month whereas the 1937 and 1941 hourly increases were comprehended on a 204 hour basis per month, hence, the monthly rate actually being paid by Carrier when the rate of pay for the position was converted from monthly to daily on May 16, 1944 was $260.75 per month and not $257.21 per month.)

EMPLOYES' STATEMENT OF FACTS: 1. This claim involves rate of pay on position of Chief Clerk, Record Room occupied by Mr. J. Heath Lamb, Office of Superintendent of Transportation, Tyler, Texas, growing out of Management's action, effective on or about September 1, 1947, in unilaterally changing the working conditions attached to his position with resultant wage

ment. Only two other positions pay as much as $12.50 a day ($12.52). Adding 69 cents a day to the rate would establish a new rate not supported by rules of the agreement nor justified for any reason.

Under these circumstances, Carrier respectfully requests that claim be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: Salary of the position of chief clerk, Record Room, Office of Superintendent of Transportation, was formerly paid on a monthly basis. Thereafter on application of the incumbent, this was converted to a daily rate under Rule 62 which provides that "The conversion to a daily basis . . . shall not operate to establish a rate of pay either more or less favorable than is now in effect."

In Award No. 3155 the question of proper daily rate for this position was determined. On the occasion of that award, the employes contended that the daily rate should be determined by division of the annual wage by 306, the number of regular work days in a year. The Carrier, on the other hand, contended that, since the position required Sunday and holiday work and the monthly salary had included that work, the proper method of conversion to daily rate was by division of the annual rate by 365. However, the Board there determined that the position had been compensated on the basis of 306 eight-hour days plus three hours' work on all Sundays and holidays in each year; that the three hours worked on those days were equivalent to 22 eight-hour days; and that the occupant, consequently, worked 328 eight-hour days in each calendar year. Accordingly, it determined the daily rate by division of the amount of annual income by 328. Thereby, the Board contended that the gross amount formerly earned "will be earned annually by the incumbent of the position if the Sunday and holiday work is required to be performed as in the past."

From the record of the instant claim, it appears that upon the conversion to daily rate, which had been computed on the basis of three hours' work at regular wage on Sundays and holidays, the Carrier under Rule 56 was required to pay the occupant of this position at penalty rate for all such work. Consequently the conversion established a rate more favorable to the Employe and less favorable to the Carrier. Then within a few days after the award, a new schedule agreement became effective whereunder an eight-hour minimum was provided for employes called to work on Sundays at penalty rate. Thereby the conversion rate became still more favorable to the employe and still less favorable to the Carrier. Then some time later, the Carrier discontinued the Sunday work on that position altogether and the Employe then found the conversion to daily rate less favorable.

The occupant of the position here contends that the action of the Carrier in discontinuing Sunday work constituted a change in working conditions and violated the previous award, No. 3155. Therefore, he asks the Board to reconsider the daily rate established for this position nearly three years ago and grant the rate of pay then sought and denied. So far as we are advised, there was no provision before Award No. 3155, establishing for this position special working conditions or minimum or maximum hours of work on Sundays or at any other time. There is nothing in the record to indicate that three hours' Sunday and holiday work was considered an appurtenance to the position or anything more than the employed time basis of payment. That award established no working conditions and no maximum or minimum hours of work and made no condition or requirement for continuance of hours of employment as then existing. It merely rated the change in measure of payment, from payment by time elapsed to payment by time worked; from payment by the calendar to payment by the clock. The occupant of the position sought the change and accepted it, for better or for worse. He accepted his additional pay when he worked more hours. He cannot reject his smaller pay when he works less.

If, as shown by the record, Carrier has discontinued Sunday and holiday employment for this position, such action may be violative of some other

right of the occupant not brought to our attention, but not of Award No. 3155. And any claim, if any exists, must be based on the rule violated. It may be that Carrier has violated some rule not brought to our attention in requiring Saturday afternoon work on this position but if so it is not in violation of Award No. 3155 and does not permit us to modify the award there made. If we had the authority to change the previous award and now increase the rate of pay, then in the event Carrier found it necessary to restore Sunday work, we should be under equal obligation to decrease the rate of pay; the rate of pay would never be stable and our award never final.

FINDINGS: The Third Division of the Adjustment Board upon the whole record and all the evidence, finds and holds:

That both parties to this dispute waived oral hearing thereon;

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

Claims 1 and 2 denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 22nd day of December, 1949.