# Award No. 4682
# Docket No. CL-4671

## NATIONAL RAILROAD ADJUSTMENT BOARD
## THIRD DIVISION

Mortimer Stone, Referee

---

## PARTIES TO DISPUTE:

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

## CHICAGO UNION STATION COMPANY

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

1. The Carrier did not properly apply provisions of Agreements, to which it was a party, namely:

Agreement dated Chicago, December 15, 1941 providing for wage increase of 9c per hour effective September 1st to November 30th, 1941 and an additional 1c per hour or 10c per hour effective December 1, 1941.

Agreement dated Washington, January 17, 1944 providing for wage increase of 4 to 10 cents per hour effective February 1, 1943 and an additional 1 to 5 cents per hour effective December 27, 1943.

Agreement dated Chicago, April 4, 1946 providing for wage increase of 16c per hour effective January 1, 1946.

Agreement dated Washington, May 25, 1946 providing for wage increase of 2½c per hour effective May 22, 1946.

Agreement dated Chicago, September 3, 1947 provbiding for wage increase of 15½c per hour effective September 1, 1947.

to occupants of the following positions included within the Scope Rule of our working conditions agreement with Carrier effective November 1, 1940:

Chief Usher
Night Assistant Ticket Agent
Day Assistant Ticket Agent (excluding the increases provided for in agreements effective January and May, 1946 that have been properly applied to this position).

2. Carrier be now required to properly apply the aforesaid National Wage Increase Agreements, retroactive to the effective date of each, by an allowance of 243⅓ hours (number of hours comprehended by the monthly rate) times the hourly increase provided for in each of aforesaid Agreements, less that heretofore supplied on basis of 204 hours per month.

EMPLOYES' STATEMENT OF FACTS: A. Our Agreement with the Carrier became effective November 1, 1940. It governs the hours of service and working conditions of that class of clerical, office, station and storehouse employes of the Carrier represented by the Brotherhood.

Carrier submits, further, that, in the case of the Chief Usher and the Day Assistant Ticket Agent, the wage awards effective January 1, 1946, and May 22, 1946, were, inadvertently, incorrectly applied on the basis of 243⅓ hours a month. In order, therefore, to effect a proper adjustment, Carrier respectfully petitions your Honorable Board to find that those awards were incorrectly applied to the two positions, effective as of the respective dates herein mentioned.

(Exhibits not reproduced.)

OPINION OF BOARD: This claim involves the proper application of several agreements for hourly wage increases to three monthly rated positions, namely: Chief Usher, Night Assistant Ticket Agent and Day Assistant Ticket Agent, all of which positions were included within the Scope Rule except as to Promotion, Assignment, Displacement and Overtime rules. It is not disputed that the formula to be here applied is to add to the existing monthly rates "an amount equivalent to the number of hours comprehended by the monthly rate" multiplied, in the case of each increase, by the amount of hourly increase therein awarded. The dispute arises over determination of the "number of hours comprehended by the monthly rate". Claimants assert that the number of hours comprehended in each of these positions was 243⅓ and Carrier asserts that the number was 204.

As aptly said by Referee Carter in Award No. 4060:

> "Certainly the words do not mean that the hours worked in a month are a fixed number, for if this had been intended, it would have been a very simple matter to have said so. We think the hours comprehended by the monthly rate are to be determined from the available evidence surrounding the position. If the monthly rate is set up by formula, the same formula should be applied in making the wage increase effective. If reports to outside agencies indicate the number of hours used in calculating a monthly salary, it is evidence to be considered. If the Carrier indicates the hours comprehended in paying for a partial month's employment, it is competent evidence of the fact. The number of hours actually worked, in the absence of any other yardstick, may be the controlling factor. We hold, therefore, that the Wage Agreements do not establish the hours of the month to be worked at any precise figure. The comprehended hours of the month are those which were contemplated by the parties in calculating the pay assigned to the position. It is from the evidence and not the Agreements that this must be determined."

In support of the claim the Committee states: (1) that these employes are excepted from overtime provisions and subject to call every day of the year, without contractual right to compensation other than the specified monthly rate, and that this rate of such employes thus comprehends 365 days per year or 243⅓ hours per month; (2) that there are five monthly rated positions excepted from Promotion, Assignment, Displacement and Overtime rules and identically situated as to the application thereto of hourly wage increases, to-wit: the three here involved, and Manager of Information Bureau, and Supervisor of Building Service, and that Carrier has applied the hourly rate increases granted in each of the five wage increase agreements to the two positions last named on the basis of 243⅓ hours as comprehended by their monthly rate thus recognizing 243⅓ hours as so comprehended; and (3) that two of the five rate increases, to-wit: those effective January 1, 1946 and those effective May 22, 1946, were applied by Carrier to the positions of Chief Usher and Day Assistant Ticket Agent on the basis of 243⅓ hours and that thereby Carrier again recognized 243⅓ hours as properly comprehended by the monthly rates of all five like rated positions.

Carrier shows, as supporting its refusal of the claim: (1) that in the Agreement effective November 1, 1940 containing the Scope Rule relied on by claimant there is a rule reading as follows:

"Rule 46—Basis of Pay

(a) The present basis of pay for monthly rated employes will continue in effect.

In computing semi-monthly earnings of monthly rated employes, each day worked will be credited as one three hundred sixth (1/306) of twelve (12) times the monthly rate.

Example: Employe with a monthly rate of $150.00 works twelve days in a pay period; amount earned equals 12/306 of 12 x $150.00, or $70.59.

All other employes will be rated on a daily basis. The conversion to a daily rate shall not operate to establish a daily rate of pay either more or less favorable than now in effect."

(2) that since November 1, 1940 the position of Chief Usher has been a six days per week position requiring no relief on the seventh day, and that the positions of Day Assistant Ticket Agent and Night Assistant Ticket Agent have been regularly assigned six days per week with relief on the seventh day and pay at regular rate for any holidays worked; (3) that in an adjustment of wages for a period when the position of Day Assistant Ticket Agent had been abolished the position was compensated on the basis of 204 hours per month without objection by the Organization or claimant.

This is evidence that under the contract such monthly rated employes were paid on the basis of 306 days per year, not 365; and that payment was based on the number of days actually worked, not on the fraction of a month elapsed. Although these positions are excepted from the Overtime rule and the monthly rate covers all service rendered, including overtime, this evidence standing alone, would be convincing of the truth of the Carrier's contentions.

However, we are here faced with the further admitted fact that Carrier has consistently adopted 243⅓ as the number of hours comprehended by the monthly rate in applying all the five rate increases with which we are here concerned to two of the five identically circumstanced positions—the Manager of Information Bureau and Supervisor of Building Service. Carrier says that the employes in these two positions were not paid additional compensation when required to work on rest days and holidays. But these two positions were, equally with the three positions here involved, subject to the provisions of Rule 46 (a). Carrier's explanation admits that both in computing semi-monthly earnings and in applying wage increases it ignored the very rule upon which it now seeks to rely.

Carrier further admits that in the case of the Chief Usher and the Day Assistant Ticket Agent two of the wage awards have been applied on the basis of 243⅓ hours per month. It attributes such increase in the case of the Manager of Information Bureau and Supervisor of Building Service to generosity and that to the Chief Usher and Day Assistant Ticket Agent to inadvertence. Compensation of employes is not a matter of gratuity or largess but a matter of contract and of right. It must not be subject to the changing whim of the employer, but anchored to dependable rule. Where there is uncertainty as to the application of rates and the Carrier voluntarily over a long period of time applies one basis to part of its employes and another basis to others identically situated under its contract, it should be held obligated to treat all alike on the more liberal of the two bases.

Consistency in interpretation of rules is necessary to successful operation both by the Carrier and by this Board, and we are greatly persuaded in our conclusion here by Award No. 3916 where was involved a similar rule, there Rule 51, providing that "To determine the daily rates for monthly rated employes multiply the monthly rate by 12 and divide by 306", and evidence as to inconsistency there, as here, was held vital in determining the number of hours comprehended by the monthly rate.

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 did not properly apply the provisions of the Agreement.

AWARD

Claims 1 and 2 sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 19th day of January, 1950.