

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert O. Boyd, Referee.

PARTIES TO DISPUTE:

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

DULUTH, MISSABE AND IRON RANGE 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:

(a) The Carrier failed to properly apply certain provisions of the National Wage Increase Agreements of April 4, 1946, May 26, 1946, September 3, 1947 and March 19, 1949 to employees of the carrier occupying positions embraced within the Scope Rule of our Agreement with the Carrier whose rates of pay were, for a definite period, subject to provisions of an Agreement of April 1, 1944.

(b) The Carrier shall now be required by an appropriate Order and Award to properly apply provisions of the National Wage Increase Agreements set forth in Section (a) hereof to the involved employees.

EMPLOYEES' STATEMENT OF FACTS: A. On October 1, 1945 formal notice was served upon Carrier in accordance with Section 6 of the Railway Labor Act, as amended, of the Employees' desire to change the rates of pay effective November 1, 1945 for all employees embraced within the Scope Rule of Agreement between the Carrier and the Brotherhood effective April 16, 1941 (subsequently revised January 15, 1947).

Subsequently similar formal notices were served on Management pursuant to the provisions of the Railway Labor Act for wage increases on April 15, 1946, March 25, 1947 and April 10, 1948.

The foregoing requests of the Employees were ultimately composed by Agreements between the respective Conference Committees representing Carriers and Employees to each of which this Carrier and the Brotherhood were parties, viz.: Agreement dated Chicago, April 4, 1946, providing for wage increase of sixteen (16¢) cents per hour effective January 1, 1946; Agreement dated Washington, May 25, 1946, providing for wage increase of two and one-half (2½¢) cents per hour, effective May 22, 1946; Agreement dated Chicago, September 3, 1947, providing for wage increase of fifteen and one-half (15½¢) cents per hour, effective September 1, 1947 and Agreement dated Chicago, March 19, 1949, providing for wage increase of seven (7¢) cents per hour, effective October 1, 1948.

Each of the aforementioned Agreements provided that all hourly, daily, weekly, monthly and piece work rates of pay for employees covered by the

OPINION OF BOARD: The claim of the System Committee is that the Carrier has erroneously applied the terms of the Wage Agreements of April 4, 1946, May 25, 1946, September 3, 1947, and March 19, 1949, to certain employes whose rate of pay had been fixed under the formula provided in paragraph (c) of the Agreement of April 1, 1944. The pertinent portion of that Agreement reads as follows:

“(c) Effective as of April 1, 1944 * * * any employes entering the service of the Company or established employes entering clerical work who have not had at least six months’ experience as a railroad clerk within five years of date of employment may be started at a reduction in rate of 10% in the rate of the position to which assigned. After six months’ experience the rate of the position will apply.”

Both parties admit that this Agreement has continued in effect.

The positions involved in this claim are all monthly rated positions, and the applicable provision of the several Wage Agreements (which is identical in each Agreement) read (using the Agreement of March 19, 1949) as follows:

“ARTICLE I—Wage Increase

Effective October 1, 1948, all hourly, daily, weekly, monthly and piece-work rates of pay for employes covered by this agreement, * * * will be increased in the amount of seven cents per hour applied so as to give effect to this increase in pay irrespective of the method of payment. The increase provided for in this Article shall be applied as follows:

* * *

(d) Monthly rates—

Determine the equivalent hourly rate by dividing the existing monthly rate by the number of hours comprehended by the monthly rate. Seven cents per hour multiplied by the number of hours comprehended by the monthly rate shall be added to the existing monthly rate.”

The Carrier has applied this formula to the existing rate of the position and paid the employes to whom paragraph (c) of the April 1, 1944, Agreement applied a rate 10% below the increased rate of the position. For such employes this was not in accord with the Wage Agreements. The wage increases provided in the several Agreements applied to employes and not positions. The computation of the amount due each monthly rated employe by reason of each increase was based on the “existing monthly rate”. The existing monthly rate for the employes who, at the effective date of a wage increase, were inexperienced and under six months’ employment was the basic rate of their position less 10%. The latter was their “existing monthly rate” until they were entitled to the rate of their position. While this results in a disparity between the “apprentice” rate and the rate of the position of less than 10%, such effect cannot be avoided where an across-the-board flat increase is applied to different existing rates, the difference having been computed by a percentage.

Provisions of the National Wage Agreements and the paragraph (c) of the Agreement on the property respecting the pay of inexperienced employes are in irreconcilable conflict. But, because of the language of the parties to the National Wage Agreement, viz., “That existing agreements between individual carriers and organizations * * * will be revised in accordance” with the Wage Agreement, we must conclude that the National Wage Agreements, which are, in their nature, special Agreements, control the Agreement on the property.

The Carrier has contended that the provisions of paragraph (i) of Article I of the Wage Agreements authorize their method of computing the

rate for the inexperienced employee. We cannot agree. We believe that this paragraph, which reads, in part, as follows:

“(i) Application of Wage Increase—

The increase in wages provided for in this Article shall be computed in accordance with the wage or working conditions agreement in effect between each carrier and each labor organization of employees * * *.”

relates to the methods of arriving at a daily, weekly, monthly or piece-work rate to which the specific increase of cents per hour shall be added. The interpretation of this paragraph sought by the Carrier would nullify the provisions of Article I which provides that the rate of pay shall be increased in an amount of a definite number of cents per hour irrespective of the method of payment.

The Carrier has urged that if a sustaining award is entered, it should not relate back and be retroactive beyond the date the claim was first filed for the reason that the long acquiescence on the part of the Organization bars it from asserting such retroactive claims. That principle has been applied where the employees have acquiesced for a long period of time in a misapplication of the Agreement or have, after knowledge of the violation, delayed in prosecuting a claim for penalty payments. Here, no payment in the nature of penalty is being exacted of the Carrier for its erroneous application of provisions of the several Wage Agreements. The payments here requested are payments due, under the Agreements of the parties, to the employees who in fact were on the payroll at applicable times. No double payment or payment for work not performed is here involved.

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 Employees involved in this dispute are respectively Carrier and Employees 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 method used by Carrier in computing wage increases under the Agreements of April 4, 1946, May 25, 1946, September 3, 1947 and March 19, 1949, for persons on its payroll and paid under the terms of paragraph (c) of the Agreement of April 1, 1944, was incorrect.

AWARD

Claims (a) and (b) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 9th day of March, 1951.