

Award No. 5542

Docket No. CL-5576

**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**

**TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS**

**STATEMENT OF CLAIM:** Claim of the Terminal Board of Adjustment, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, that Carrier violated Agreements governing rates of pay and working conditions of employes represented by the Brotherhood:

(a) When effective September 16, 1950, and continuing to December 1, 1950, Management unilaterally reduced the Agreement rate of \$440.75 per month to \$350 per month established for position of Special Accountant-General in Office of Auditor and Secretary, St. Louis General Offices.

(b) That Carrier compensate Mr. E. B. Bischoff, occupant of the Special Accountant-General position for the difference between what he was paid for his services as such, \$350 per month, from Sept. 16, 1950 to December 1, 1950, on which latter date, Carrier restored the proper Agreement rate of \$440.75 per month.

**EMPLOYES' STATEMENT OF FACTS:** Our agreement governing the hours of service and working conditions of the employes, effective January 1, 1950, embraces under Rule 1 thereof all employes of the Carrier within and under the craft of class of clerical, office, station and storehouse employes.

Provision is made in the current Agreement effective January 1, 1950, for the non-application of certain rules to certain designated clerical positions including four positions in the Office of Auditor and Secretary, St. Louis General Offices, to wit:

<b>NAME</b>	<b>POSITION</b>	<b>RATE OF PAY</b>
A. J. Van Hee	Chief Clerk	\$456.88 month
Florence R. Calmer	Secretary	322.44 "
H. J. O'Brien	Special Accountant (General)	440.75 "
E. B. Bischoff	Special Accountant (Valuation)	322.50 "

The rates of pay attached to these positions in the preceding tabulation were those established with the application of National Agreement dated March 19, 1949, providing for, among other things, wage increase of seven cents (7c) per hour effective October 1, 1948, to which both the Carrier and Brotherhood were parties.

"It is our desire to confer with you regarding this proposal and we, therefore, request that you advise a time, date and place acceptable to you for the holding of such conference.

"An early reply will be appreciated."

We declined to enter into an agreement such as requested, but did furnish the General Chairman with a statement showing the rates of daily rated clerical and station forces fully covered by all provisions of the effective agreement. He was not satisfied with the statement because it did not show the excepted forces and requested that he be furnished the additional information which was refused because of the fact that the agreement did not cover the wages of those people. The organization then invoked the services of the National Mediation Board, being docketed as Case No. A-2877. Efforts of the mediator to compose the dispute were unsuccessful and arbitration was proffered but was declined by the management. On December 27, 1948, we were advised by the National Mediation Board that the case had been closed. The organization evidently was convinced that their request was without merit because they took no further action when the case was closed by the National Mediation Board and have not done so since.

The instant case is the first attempt on their part to restrict or interfere with the right of management to fix the rate of pay of an individual excepted position, for which there is no justification under the schedule agreement. As we have shown, the organization abridged their right to make such claim by agreeing (Rule 1(b)) to except such positions from the application of any rules relating to rates of pay, overtime and hours of service.

There being no basis for the claim it should be denied.

(Exhibits not reproduced.)

**OPINION OF BOARD:** On September 16, 1950, claimant was appointed Special Accountant, Auditor and Secretary's Office, an excepted position subject only to Rules 1, 4(d) and 14. The position became vacant by the promotion of the former occupant, H. J. O'Brien, to the position of Chief Clerk. O'Brien entered the service of the Carrier on April 6, 1908 and had held the position here involved since May 1, 1941. The rate of pay at the time of his promotion therefrom was \$440.75. Claimant entered the service of the Carrier on February 7, 1940. When he assumed the position of Special Accountant, Auditor and Secretary's Office, the Carrier fixed the rate of the position at \$350 per month. The Organization contends that the rate should have been \$440.75 and makes claim for the difference on behalf of this claimant.

It is not questioned that the position was partially excepted and prior to the National Wage Increase Agreements of April 4, 1946, May 25, 1946 and March 19, 1946, the Carrier could unilaterally fix the rate of pay of the position because of its partially excepted status. After the negotiation of the National Wage Increase Agreements, this Board by Award 3916 and subsequent awards determined that the wage increases granted thereby applied to all positions under the scope of the Agreement including those excepted from the rules governing rates of pay. This subjected the excepted positions to the provisions of the National Wage Increase Agreements, including the provision requiring the carrier to maintain the increases granted unless changed by negotiation. But the National Wage Increase Agreements did not purport to otherwise change collective agreements previously negotiated.

We point out that the requirement that the wage increases be maintained did not have the effect of freezing the basic rates of positions excepted from rules governing rates of pay. The increases granted to positions excepted from rules governing rates of pay must therefore be maintained. In other words, it was not contemplated that Carrier would grant the wage

increases in accord with Award 3916 and immediately thereafter reduce the rate of the position because of their partially excepted nature for the purpose of defeating the wage increase. If a reduction of the basic rate could be justified on any other basis or if it could not be shown that a reduction was made for the purpose of defeating the wage increases granted by the National Wage Increase Agreements, no violation of the Current Agreement or the National Wage Increase Agreements existed. This was made clear by Award 4494 to which we adhere.

In the case before us, it is not shown that the purpose of the reduction in the monthly salary of the Special Accountant, Auditor and Secretary's Office, was for the purpose of defeating the wage increase provided for by the National Wage Increase Agreements. The Carrier was therefore free to fix the rate of the position unilaterally in the same manner as it did prior to the negotiation of the National Wage Increase Agreements. Claimant was new to the position. He began his service with the Carrier in 1940 while O'Brien had been in its service since 1908. Even though the Carrier is not required in the situation here presented to justify the reduced rate, it is apparent that valid considerations existed for so doing. The basic rate of pay was for the Carrier to determine so long as it was not done for the purpose of defeating the negotiated wage increases held by Award 3916 to apply to the position. The record will not support a sustaining award.

**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

That the Agreement was not violated.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: A. I. Tummon  
Acting Secretary

Dated at Chicago, Illinois, this 2nd day of November, 1951.