Award No. 6344
Docket No. CL-6094

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Livingston Smith, Referee

PARTIES TO DISPUTE:

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

KANSAS CITY TERMINAL RAILWAY COMPANY

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

(a) The Carrier improperly applied the wage increases of the National Wage Agreement of March 1, 1951 to the positions of General Foremen, Mail and Baggage Department, for the period February 1, 1951 to and including May 31, 1951 and to the positions of Assistant Station Masters, Passenger Department, for the period February 1, 1951 to and including July 31, 1951;

(b) An adjustment be made in the wages of General Foremen for the period stated in paragraph (a) to cover a shortage in pay of $22.22, and;

(c) An adjustment be made in the wages of Assistant Station Masters for the period stated in paragraph (a) to cover a shortage in pay of $17.98.

EMPLOYES' STATEMENT OF FACTS: There is an Agreement between the parties bearing effective date of October 1, 1942, subsequently amended on several occasions, copies of which have been filed with the Board. The Employes request that the said Agreement, as amended, be accepted by this reference as evidence in this case. In addition to the Agreement of October 1, 1942 there were prior Agreements between the parties governing the wages and working conditions of employes represented by the Brotherhood bearing effective dates of March 1, 1924 and February 17, 1936.

Inasmuch as Scope Rule 1 of the several Agreements referred to above are of primary importance in the dispute here being presented, copies of Rule 1 as it appeared in the several Agreements are attached hereto as Employes' Exhibits A, B, and C.

Under date of October 25, 1950, the Employes served a formal notice as per copy attached and marked Employes' Exhibit D, Page 1, notifying the Carrier of their desire to negotiate and increase in the rates of pay of all employes of the Carrier represented by the Brotherhood. The request of the Employes was declined in conference on the property, and, in response to the request of the Employes contained in their letter of October 25, 1950 that in such event the dispute be handled by National Committees representing

OPINION OF BOARD: We are here concerned with the alleged improper interpretation and application of the National Wage Agreement of March 1, 1951 by the Respondent when it failed to apply all of the provisions of the Agreement to the positions of General Foremen, Mail and Baggage Department, and Assistant Station Masters, Passenger Department.

Respondent asserts that the 12½¢ hourly wage increase provided for in the aforesaid Agreement was not intended to apply to the positions in question inasmuch as they are excluded from the wage provisions of the effective Agreement and that the authorization of the Carriers' Conference Committee which represented and executed the Wage Agreement was agent for them did not have the authority to bargain for wage increases which would apply to these excepted positions. The Respondent takes the further position the phrase in the authorization "This authorization is co-extensive with the provisions of current schedule agreements applicable to the employes represented" *clearly indicates lack of authority to negotiate for the positions involved* here.

There is no conflict in material facts of record. On October 25, 1950 the Organization addressed a demand to the Carrier for a 25¢ hourly wage increase **for all employes they represented.** Under date of January 9, 1951 Carrier acknowledged receipt of this communication and designated the Carriers' Conference Committee as their representative in negotiations **on this request.**

We are of the opinion that the position of the Respondent is without merit. In answer to the initial request of the Organization, no limitation on the coverage of future negotiations was requested. None are contained therein. The Respondent admits that the authorizations which formed the basis of prior wage agreements were in substance the same as the one here. Yet in prior years, all wage increases were applied to those whom it now contends are not covered.

This issue has been passed upon by this tribunal in Awards 5905, 5956 *and 6034. In Award 5905 we said:*

> "* * * When the recent authorizations of the Carrier to the Conference Committees mention 'current schedule agreements', they embrace all employes covered in the Scope Rule. These employes are covered. The fact that the Organization agreed to exempt them from certain rules, including rate-of-pay rules, is immaterial. The rate-of-pay rules in the Schedule Agreement have nothing to do with general wage rate increases but are confined to such matters as *rate-of-pay changes for particular positions when job content is* changed. * * *"

The above and other principles enunciated in the above cited awards can properly be followed here.

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 Carrier must apply Article I of the March 1951 Wage Agreement to the claimants herein.

AWARD

Claims (a), (b) and (c) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 29th day of September, 1953.

DISSENT TO AWARD NO. 6344, DOCKET NO. CL-6094

This case cites **Awards 5905** and **6034** and purports to agree with and follow them. It will be seen that the heterogeneous character of those decisions cannot constitute a line of authority. These forerunning decisions, although made by able referees, reflect a misunderstanding of the principles of collective bargaining.

In the majority's **Award 5905** (cited by the author here), the majority, speaking in that case of similarly excepted positions which the Organization sought to include in a general wage increase, said: "True, the Organization has agreed to exempt them from certain provisions of the Rules or Schedule Agreement, including those dealing with rates of pay." With that finding as to the effect of the Schedule Agreement between the parties, the majority had no authority for concluding, as it did, that "The fact that the Organization agreed to exempt them from certain rules, including rate-of-pay rules, is immaterial." The proper conclusion would have been that so long as the Organization had not secured the right to deal with the subject of rates of pay for positions excepted from wage provisions, it could not acquire that right by any means other than a change in the Schedule Agreement itself through the exclusive process prescribed in the amended Railway Labor Act. Therefore, that decison is clear fiat.

Our author also cites **Award 5956** as having passed upon this issue. The citation is improper and accentuates the misappreciation of the entire issue. That Award clearly said that there the dispute was "not concerned with whether or not X-1 and X-2 (excepted) positions were subject to the wage increases provided in the National Wage Agreement." The dispute was clearly characterized in that case as being concerned with the mechanics of making the adjustments in rates of pay. That is wholly foreign to the issue in our current case and the Award was apparently given a superficial consideration.

In our **Award 6034** (cited by the author here), the majority ignored the 1951 negotiations out of which the dispute grew and the decision was based entirely upon a 1947 **Arbitration.** See the Dissent in that case.

While professing to follow the cited Awards which are patently unsound and obviously inapplicable, the majority here proposes the innovation in Railway Labor Act procedure that because the Organization requested a wage increase **for all employes they represented** and demanded that the Carrier designate an agent to handle it, the resulting wage increases should be applied to those positions over which the Organization had affirmatively excluded its authority in the matter of wages by the terms of the controlling Schedule Agreement, and the written authority of the Carrier's agent was expressly limited to those terms. We cannot have a line of sound authority in the whimsical heterogeneity running through these cases.

The unchanged Schedule Agreement reflecting the basic relationship between the parties presents this situation: excepted positions do not come within the ambit of the Organization's contractual right to reach wages of the employes they represent. In order to change that situation, the Schedule Agreement would have to be changed by the exclusive processes of the amended Act which are not a part of the function of this Board. These Awards, therefore, ineffectively propose that, irrespective of Schedule Agreement provisions to the contrary, excepted positions are subjected to the same wage provisions as are all other positions represented by the Brotherhood. It has been authoritatively said in a case involving the inclusion of wholly excepted clerical positions within the provisions of the Schedule Agreement, "We do not mean to say that all employes of the bargaining unit should be subjected to the same rules and we do not understand that the Brotherhood has ever so contended." (**Brotherhood of Railway and Steamship Clerks, and Station Employes, et al., vs. Atlantic Coast Line Railroad Company**, 201 F 2d 36, Jan., 1953.) The Brotherhood in our case does not contend now that these employes are not excepted from wage provisions of the Schedule Agreement.

/s/ E. T. Horsley

/s/ R. M. Butler

/s/ W. H. Castle

/s/ C. P. Dugan

/s/ J. E. Kemp