

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Curtis G. Shake, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
BANGOR AND AROOSTOOK RAILROAD COMPANY**

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

- (1) That the Carrier violated the 1941 and subsequent Wage Agreements by increasing the cost of rentals to its employees living in houses owned by the Carrier;
- (2) That the Carrier reduce the rental charges to its employees to the same level as they were on August 31, 1941; and that the employees affected by this violation be reimbursed for overcharge as a result of this charge.

EMPLOYEES' STATEMENT OF FACTS: On or about December 1, 1951, the Bangor and Aroostook Railroad Company increased the rental charges of company-owned houses by certain employees coming within the scope of the Agreement with the Brotherhood of Maintenance of Way Employees. These increased charges are still in effect.

Although the Carrier was not a party to the various Wage Agreements negotiated on a National basis between the majority of the Nation's Carrier's and certain so-called non-operating Brotherhoods, the Bangor and Aroostook Railroad Company entered into subsequent Agreements with the Brotherhood of Maintenance of Way Employees accepting the provisions and effective dates of each so-called National Wage Agreement, beginning with the Wage Agreement effective December 1, 1941, and ending with the Wage Agreement effective February 1, 1951. These Wage Agreements together with the basic Agreement effective December 7, 1950, between the parties of this dispute are by reference made a part of this Statement of Facts.

POSITION OF EMPLOYEES: The Carrier owns and maintains along its railroad a number of houses which it rents to Employees. These houses are, for the most part, boxcars or caboose bodies which have been converted into housing quarters, with certain additions thereto in some instances. These houses are located near the location of each respective designated headquarters station and are furnished to the employees because there are no other available houses convenient to the location of the work which the Carrier wants the Employees to perform.

Furnishing these houses to the Carrier's employees serves as one of the inducements and considerations for the employees to accept employment at certain locations which are generally inaccessible to schools, shopping

Carriers rates of pay are uniform for all employees of a class. The 31 Sectionmen who rent dwellings from the company now receive and have always received the same hourly rates of pay as the approximately 300 other Sectionmen who do not live in company dwellings.

(Exhibits not reproduced.)

OPINION OF BOARD: For many years the Carrier has owned some thirty houses, located on its railroad property and occupied by its Maintenance of Way employees. The employees using these properties sign written leases therefor, which are subject to being terminated by either party on seven days' notice. As of December 1, 1951, the Carrier substantially increased the rentals, as the following examples will indicate. For five houses the rent was increased from \$1.00 to \$5.00 per month, two from \$4.00 to \$18.00, one from \$6.00 to \$20.00, one from \$8.00 to \$25.00, and one from \$11.00 to \$21.00.

The Organization contends that the Carrier was precluded from making these increases effective because of the force of Article I (g) which reads:

"Insofar as concerns deductions which may be made from the rates resulting from the increase herein granted under Section 3 (m) of the Fair Labor Standards Act of 1938, they may continue to be made to the extent that such deductions were legally made as of August 31, 1941."

Section 3 (m) of the Fair Labor Standards Act of 1938 provided that in determining whether a carrier was paying the minimum wage to its employees, "wage" should be considered as including "the reasonable cost, as determined by the Administrator, to the employees of furnishing such employee with board, lodging or other facilities, if such board, lodging or other facilities are customarily furnished by such employer to his employees."

The Organization contends, therefore, that the rentals which the Carrier may charge for the buildings in question are frozen as of August 31, 1941, citing Awards 4141 and 4337. Award 4141 involved an agreement that expressly provided that, "So far as practicable, comfortable houses will be furnished," while it was stated in Award 4337 that it had been the practice of the carrier to furnish houses for its employees.

On the other hand, this claim involves only 30 out of more than 300 of the Carrier's sectionmen. While the rentals paid by the claimants are deducted from their wages, pursuant to written authorization, it does not appear that occupancy of any of these buildings is attached to any of the positions, or that the rentals are in any manner reflected in the wage schedule thereof. There is no showing that the claimants are required to occupy the buildings in question or that it is necessary for them to do so to hold their jobs.

Under the circumstances, we are of the opinion that the contractual provisions relied upon by the Organization have no application here, and that the claim is not sustained by the evidence. The situation appears to be one of private contract between the parties, wholly unrelated to the claimants' positions or wages, and they are free to terminate their leases, in accordance with the terms thereof, without jeopardizing their positions or affecting the wages to which they are entitled.

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 evidence does not establish a violation of the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 27th day of July, 1954.