Award No. 6952
Docket No. MW-6914

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

A. Langley Coffey, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY

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

(1) The Carrier violated the National Agreements of February 1, 1941; April 4, 1946; May 27, 1946; September 3, 1947; March 19, 1949; and March 1, 1951, and the effective basic Agreement in the second payroll period of May, 1949, and again in each of the months subsequent thereto when it required deductions to be made for rental charges on car-body living quarters furnished to its Draw-bridge tenders at Ottawa, Illinois and at LaSalle, Illinois;

(2) The Carrier now be required to discontinue the aforesaid deductions and/or rental charges and to reimburse the claimant drawbridge tenders for all such deductions made account of the violation occurring in May, 1949, and account of each similar violation which occurred in each month subsequent thereto.

EMPLOYES' STATEMENT OF FACTS: The Carrier employs a number of Draw-bridge Tenders at Ottawa, Illinois and at La Salle, Illinois, for whom the Carrier has furnished some discarded car bodies to be used by these classes of employes as living quarters, primarily—but not exclusively—to have such employes reasonably available to perform service on these draw-bridges. As of August 31, 1941, and prior thereto, these car bodies were furnished to these draw-bridge tenders free of charge, together with fuel and electrical current as indicated in the following letter from Master Carpenter William Ascott to Bridge Tender K. M. Zolper, copy of which was furnished to Superintendent W. E. Haist:

"Aurora, Illinois,
September 17, 1942
File WGA.

Mr. K. M. Zolper
Bridge Tender, LaSalle, Ill.

Referring to your letter of September 15th, in regard to granting a furlough for 90 days, in order for you to try out on a switchmans job.

OPINION OF BOARD: The question here is the right of the Carrier to charge rental on car-body living quarters furnished to its Drawbridge tenders at Ottawa, Illinois and at LaSalle, Illinois, in view of stipulation contained in Mediation Agreements of February 1, 1941; April 4, 1946; May 27, 1946; September 3, 1947; March 19, 1949 and March 1, 1951 to which this Carrier was a party.

While the Carrier, as one defense, asserts that the claim is clearly barred by a provision in the Agreement, it also joins issue on the merits, and, in the alternative, contends that the Agreement was not violated when, in the second payroll period of May 1949, and from that time forward, rent has been charged for living quarters which previously had been furnished rent-free, and for which the Carrier has made and continues to make deductions in the amount of the rent from the paycheck of two Claimants on whose behalf the instant claims are made.

Rule 57 on which the Carrier relies as a bar to these claims is not the same rule now in effect on the property. No purpose would be served by interpreting an obsolete rule, and, while the Carrier had the right to rely thereon in this docket for its plea in bar, we have decided that, under the circumstances existing and the conclusion that has been reached on the merits, the true intent and purposes of the Railway Labor Act, as Amended, will best be served by full discussion and handling of the claims at issue, without considering or deciding the validity of Carrier's plea in bar and without prejudice to the rule put in issue for that purpose.

An examination of the Agreement does not disclose a rule which requires of the Carrier that it furnish housing to Claimants or that Claimants occupy and reside in Carrier-owned dwellings. The fact that the Carrier owns and rents to its employes 490 dwelling units at stipulated rental, only gives rise to an independent relationship of landlord and tenant unless a contrary intent is shown. Such relationship needs no support in the collective Agreement.

It remains a fact, however, that on August 31, 1941, Claimants were occupying Carrier-owned property rent-free, and, according to Petitioner, the Mediation Agreements in question preclude deductions from wages now for rental on these units.

Since the Carrier is under no obligation, contractually or otherwise, to furnish housing to these Claimants, either rent-free or at a stipulated amount of rental, and the employes are under no obligation to occupy such rental units, we must now look to the record to see if the essential relationship between wages and rentals has been shown.

The Carrier tells us it never intended that Claimants in this docket should enjoy housing accommodations rent-free as a condition of employment, although for a time it temporarily discontinued rentals where the rate was less than $10.00 a month as a matter of expediency.

The Mediation Agreements generally are referred to as "National Wage Agreements." As that term would indicate, they are of general application in their scope and are binding on all signatory parties alike. When they are put in issue by disputes of this character, though, the Board is under a peculiar duty to apply them to the conditions which are found to exist on the individual properties, and should not attempt to interpret them beyond the bare necessity for settlement of a pending dispute.

The parties to this dispute, by their Agreement, give recognition and expression to rates of pay on the basis of classification of work for recognized positions. Claimants, when this dispute arose, were classified as Drawbridge Operators on positions at LaSalle and Ottawa for an agreed-upon rate of $250.32 a month. There are four Drawbridge Operator positions at these points, with the same duties, and like rates of pay, and only Claimants reside in Carrier-owned dwellings. The Petitioner now offers no explanation for

what would be a disparity in agreed-on rates of pay for classified positions if we should sustain these claims. This, to us, is proof positive that housing accommodations are not one of the increments of the position of Drawbridge Operator and, therefore, can be no part of wages for encumbents of these positions. Thus, there seems to be no relationship between rentals and wages in this case.

We find, also, that for the time no rental was charged, only one Drawbridge Operator was stationed at each of the two points in question, and accommodations were furnished in order that they could be on hand for a 24-hour period to operate the drawbridge when needed. Thus, there was some element of a requirement that they occupy facilities provided by Carrier under those conditions, but when the two additional positions were created and employes assigned, that requirement was removed and it is no longer a condition of employment to be met by Claimants.

Having concluded that it is not and was not a condition of their employment for the times in question that Claimants occupy Carrier-owned dwellings, and being of the further opinion that there has been no relationship shown in the docket between rentals and wages, claims must be denied.

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 Agreement was not violated.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 12th day of April, 1955.