Award No. 7064
Docket No. MW-6821

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY

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

(1) Beginning as of August 1, 1952, the Carrier has been in continuous violation of the National Wage Agreements of February 1, 1941; April 4, 1946; May 27, 1946; September 3, 1947; March 19, 1949; and March 1, 1951, and in violation of Supplement "D" to the currently effective Agreement when it requires deductions to be made for housing and other facilities at certain locations which theretofore had been customarily furnished free of charge to section foremen and section men at these locations;

(2) The Carrier shall discontinue making the aforementioned deductions, and reimburse all employes for such deductions made in violation of the Agreement since August 1, 1952.

EMPLOYES' STATEMENT OF FACTS: The housing and other facilities involved in the instant dispute are those which have been customarily furnished free of charge to Maintenance of Way Employes assigned to positions on that part of the Carrier's line of road which was identified as the Denver and Salt Lake Railroad prior to April 11, 1947, and which was merged with the Denver and Rio Grande Western Railroad effective as of April 11, 1947.

Subsequent to the merger of the two properties, the parties to the instant dispute entered into negotiations designed to coordinate the application of the two collective bargaining Agreements held by the Brotherhood of Maintenance of Way Employes on the merged properties. Coordination Agreement was reached on July 25, 1947, said Agreement to become effective August 1, 1947, being currently identified in the current Agreement on Pages 59-61 as Supplement "B".

The Coordination Agreement provided that, with certain exceptions not pertinent hereto, the "Denver and Salt Lake Agreement" would be cancelled as of August 1, 1947, and the "Denver and Rio Grande Western" Agreement with effective date of February 1, 1941, would thereby be extended to include Maintenance of Way Department employes of the former Denver and Salt Lake Railway Company.

"Claim of the System Committee of the Brotherhood

(1) That the Carrier violated the effective agreement when they increased the deductions made for meals served Extra Gang employes, above the deductions being legally made as of August 31, 1941;

(2) That employes who have had deductions made from their rates in excess of the deductions being legally made as of August 31, 1941, be reimbursed for the difference between the amount they should have received and the amount they have received since said deductions were increased."

and with respect to this Award the Carrier holds the factors involved are not comparable to the instant dispute and the Award, therefore, has no application thereto.

As previously stated, the Denver and Rio Grande Western Railroad has never placed itself in the position of furnishing section foremen or section men housing and fuel either by custom, practice or contractual provision, and it asserts this was well known to the representative of the Maintenance of Way employes (who was the representative of the employes on both railroads) who negotiated and signed the Coordination Agreement effective August 1, 1947, Supplement B of the current Agreement.

The Carrier holds that in connection with the issue involved the Employes have had their day in court. They knew what the practice had been on the Denver and Rio Grande Western Railroad as well as on the former Denver and Salt Lake Railway—yet they made no effort whatsoever—when negotiating the Agreement effective August 1, 1947, to retain for the employes on the former Denver and Salt Lake Railway, the provisions of Rule 21(a) of the former Denver and Salt Lake Railway Maintenance of Way Agreement.

The claim must and should be denied. All data in support of the Carrier's position has been submitted to the Employes and made a part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: On April 11, 1947, the Denver and Salt Lake Railway Company was merged into the Denver and Rio Grande Western Railroad Company. A coordination agreement was entered into, effective August 1, 1947, in compliance with the Washington Job Protection Agreement. By the coordination agreement, the seniority rights of each class of employes of the Denver and Salt Lake Railway Company were merged on the rosters of the Denver and Rio Grande Western and the collective agreements made with the former were cancelled except that Rules 10 (h), 11 (c) and 20 (a) were to be continued in effect for five years as to former Denver and Salt Lake employes. By virtue of the retention of the foregoing rules, Carrier made no deductions for housing, lodging and other facilities furnished from August 1, 1947 to August 1, 1952. Commencing on August 1, 1952, Carrier made deductions for housing and fuel furnished at the rates shown in the record. The Organization contends that Carrier violated Article 1(h) of the National Wage Agreement of March 1, 1951, in so doing. The claim is that Carrier be required to discontinue making such deductions and for reimbursement for all deductions made since August 1, 1952.

In the Mediation Agreement of December 1, 1941, it was provided by Section (2) thereof that it was permissible to make deductions provided for by the Fair Labor Standards Act for the reasonable cost of board, lodging or other facilities furnished to employes to the extent such deductions were being made as of August 31, 1941. Similar language was contained in sub-

sequent wage increase agreements, including that of March 1, 1951. It is the contention of the Organization that the only deductions for housing, lodging and other facilities furnished are those being deducted on August 31, 1941, irrespective of the coordinating agreement effective August 1, 1947.

It seems clear to us that the coordinating agreement of August 1, 1947, is valid as between the Carrier and the former employes of the Denver and Salt Lake Railway Company. They (the employes) became subject to the collective agreement between the Denver and Rio Grande Western and its maintenance of way employes on that date, except as to the three rules which became ineffective on August 1, 1952, five years later. The latter was a special agreement which was superior to the general provisions of wage increase agreements. The five year extension of the effective date of Rules 10 (h), 11 (c) and 20 (a) of the agreement with the Denver and Salt Lake Railway Company and was done in compliance with the Washington Job Protection Agreement. It was fully intended that at the end of the five year period on August 1, 1952, that the former employes of the Denver and Salt Lake Railway Company were to be fully bound by the agreement with the reorganized Denver and Rio Grande Western. This simply meant that deductions for housing, lodging and other facilities would be applied in exactly the same manner and subject to the same conditions as had been applied to Denver and Rio Grande Western employes since August 31, 1941. Such former employes of the Denver and Salt Lake Railway Company were entitled to the same benefits emanating from subsequent wage agreements as employes of the Denver and Rio Grande Western, and no more. The former's right to free housing, lodging and other facilities, became non-existent on the extended cancellation date of Rules 10 (h), 11 (c) and 20 (a), and such employes then became fully bound by the then current collective agreement with the respondent Carrier. Such employes must accept the provisions of the subsequent wage agreements as they affect the Denver and Rio Grande Western Agreement, there being no other agreement in existence after August 1, 1952, to which they could relate.

For the reasons stated, a denial award is required.

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 Emloyes 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

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 22nd day of July, 1955.