

Award No. 7646
Docket No. CL-7642

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward A. Lynch, Referee

PARTIES TO DISPUTE:

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

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the Carrier violated the terms of the currently effective working agreement when on October 20, 1954 it arbitrarily reduced the rate of pay on the position of "Joint Facility Checker" in the office of General Auditor from a rate of \$379.03 per month to \$354.03 per month, and,

That the Carrier should re-establish the rate of pay of the position of "Joint Facility Checker" to the proper rate of \$379.03 per month retroactive to October 20, 1954, and

That the Carrier shall compensate E. G. Olson and all other employees involved in or affected by this violation for all wage loss suffered on October 20, 1954 and each subsequent date thereafter until the condition is corrected.

EMPLOYEES' STATEMENT OF FACTS: Prior to October 20, 1954, the position of Joint Facility Checker in the office of General Auditor was assigned to A. F. Joseph at a monthly rate of \$379.03. A short time prior to October 20, 1954, A. F. Joseph was assigned to special duties in Chicago, Illinois.

On October 20, 1954, E. G. Olson was assigned to Mr. Joseph's previously held position of Joint Facility Checker at a rate of \$354.03 per month.

E. G. Olson performed, and continues to perform, all the duties and responsibilities that were attached to the position during the period it was occupied by A. F. Joseph.

POSITION OF EMPLOYEES: There is in effect an Agreement between the parties bearing effective date of September 1, 1942, revised September 1, 1949, and March 1, 1953, from which the following rules thereof read:

RULE 1 (In Part.)

"These rules shall govern the hours of service and working conditions of the following classes of employees that come within and

The intent of this rule is clear, inasmuch as it is recognized that Carrier may unilaterally increase the rate of a position, but such new position must be bulletined in order to give all affected employees a chance to apply therefor and be assigned in accordance with seniority. This rule prevents incumbent rates where the Carrier, because of favoritism, increases an employee's rate of pay. The increase goes to the position and not to the employee and such position must be bulletined.

It is the Employees' position that the facts here involved and the controlling rules clearly require that the claim be sustained in its entirety. We are confident the Board will so rule.

It is affirmed that all data herein submitted in support of claimants' position have been submitted in substance to the Carrier and made a part of the claim.

CARRIER'S STATEMENT OF FACTS: Mr. A. F. Joseph, the regular occupant of the position of joint facilities checker in the Office of General Auditor, Minneapolis, was assigned to special duties during the period October 20, 1954 to March 21, 1955. During that period his position was occupied by E. G. Olson, who was paid the basic monthly rate of the position, \$354.03.

POSITION OF CARRIER: Because of Clerk Joseph's meritorious service over many years, which included eighteen years on the joint facility checker's position, and his especial ability on that position, Carrier felt that his service and ability should be recognized in a concrete way, and therefore, beginning with October 1, 1950, an allowance of \$25.00 monthly has been made to Mr. Joseph, in addition to, and apart from, the basic monthly wage rate of the position.

Mr. Joseph understands that this payment is not a part or portion of the basic wage rate of his position, and that it may be discontinued whenever, in the Carrier's judgment, it is advisable to do so. The payment applies to Clerk Joseph only, not to the position which he occupies.

The basic wage rate of the position has not been disturbed, and in Carrier's opinion, no rule or provision of the Clerks' Agreement requires the continuance of the \$25.00 monthly payment to either Mr. Joseph, to Mr. Olson, or to any other clerk that may be assigned to the position, either on a temporary or permanent basis.

Rule 50 of the current Clerks' Agreement, effective February 1st, 1955, reads:

"Basic rates of pay for employees covered by this agreement which are now in effect shall become a part of this agreement and shall remain in effect until changed by mutual agreement."

(This rule is identical to Rule 51 in effect prior to February 1st, 1955.)

The basic rate of pay of the position herein involved was not changed, and Clerk Olson was paid the basic wage rate of the position while he occupied the position.

Carrier believes the instant claim to be without merit and that it should be denied.

All data in support of Carrier's position has been presented to the representatives of the Employees.

(Exhibits not reproduced.)

OPINION OF BOARD: In the instant case, we have a situation where Carrier, "in order to show its appreciation for his long, continuous and outstanding service," paid A. F. Joseph a "special \$25.00 monthly allowance,

effective October 1, 1950, which amount was in addition to, and apart from the basic monthly wage rate negotiated for that position."

Carrier maintains when this "allowance" was first paid to Mr. Joseph, "he was advised, and understood, that this special allowance was being made because of his many years of meritorious service, and that it was an allowance separate and apart from the basic wage rate applicable to the Joint Facility Checker position which he occupied," which was then fixed at \$354.03 per month.

And for some time—more than four years—this situation continued. But, on October 24, 1954, he was temporarily relieved of his Joint Facility Checker position assignment, to accept a special duty assignment for Carrier, concerning which there is no dispute. This special duty assignment of Joseph lasted from October 24, 1954 through March 21, 1955, and during this period, the Joint Facility Checker assignment was awarded to E. G. Olson and others at the rate of \$354.03, which Carrier maintains is the basic monthly wage rate of the position.

The Organization maintains the basic monthly wage rate of the position at October 20, 1954, when Joseph left position for special duty assignment, was \$379.03 (\$354.03 plus \$25.00). Olson, and others, who filled the Joint Facility Checker position in Joseph's absence, received the \$354.03 rate. When, on March 21, 1955, Joseph returned to the position in question he was paid at the \$379.03 rate.

The Organization contends, and Carrier does not object, that the position in question is covered by the prevailing agreement in all except the Promotion, Assignment, Displacement and Bulletin Rules (Rules 8 through 19.)

The Carrier steadfastly maintains the \$25.00 was a "special allowance," an "outright gift" and was and is not a part of the basic rate. The Carrier further contends the \$25.00 was not a "negotiated rate increase" and points to Rule 51:

"Basic rates of pay for employees covered by this agreement which are now in effect shall become a part of this agreement and shall remain in effect until changed by mutual agreement." (Emphasis ours.)

The Organization does not deny the \$25.00 was not a "negotiated rate increase," but in presenting its claim relies on several points, one of which is Article 2 (c) of the National Wage Agreement, effective February 1, 1951 (5 months after the \$25.00 "special allowance" was given Joseph by the Carrier):

"Wage rates in effect February 1, 1951, will not be reduced during the life of this Agreement . . ."

The Carrier's rejoinder is that this (National Wage) Agreement specifically excludes special allowances, not included in said rates, from its coverage, viz., Article I (i):

". . . Special allowances not included in said rates will not be increased."

But was it, as Carrier asserts, "a special allowance?"

The record in this case reveals that on June 4, 1952 the Carrier here involved had a special situation where it deemed it proper to grant to one A. M. Thune, traveling auditor, a special allowance, or increase of \$20.00 per month, but it covered such grant by a letter to the General Chairman, pointing out specifically that it was "not to be considered as the basic wage

rate of the position." The letter, countersigned by the General Chairman, asserted:

"It is understood and agreed that when and if a vacancy occurs in the position, the Carrier may, without further agreement with your organization, reduce the monthly wage rate in the amount of \$20.00."

There is no such written document in evidence in the instant case. It is, however, granted that in this instance, Carrier's letter was "confirming understanding reached in conference." There was no such conference held with respect to the \$25.00 granted Joseph.

Neither did Carrier notify the Organization it was granting Joseph an extra \$25.00 per month, for whatever reason.

However, it must be admitted, that whether "negotiated" or not, the \$20.00 granted Thune was a "special allowance" of record between the parties, and its terminal facilities are spelled out in the exchange of correspondence between the parties.

The \$25.00, on the other hand, granted Joseph was not made a matter of record by the Carrier between the parties, and we are forced to conclude therefore that Carrier, having paid this \$25.00 to Joseph as Joint Facility Checker from October 1, 1950 to October 24, 1954; and, upon resumption of that position from March 21, 1955 forward, must now be assumed to have made the \$25.00 a part of the basic rate of the position, Joint Facility Checker, because Rule 48 provides:

"Positions—Rating of:

"Positions (not employees) shall be rated . . ."

It might well be asked here, what weight does Carrier's argument have that the \$25.00 was not a "negotiated increase" and the several awards it cites in support of its denial of the claim here made?

The answer must be, on the evidence and the agreement, that if the parties intended Carrier's position to be the correct one, they would not have incorporated Rule 48—a rule incidentally, here applicable. Rule 48, then, must be the exception. In this case, Carrier did not, by record, except the \$25.00 it paid Joseph as it did on June 4, 1952 with respect to Traveling Auditor Thune, and it must be considered a part of the rate of Position, Joint Facility Checker.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties to this dispute waived oral hearing thereon;

That the Carrier and the Employee involved in this dispute are respectively carrier and employee 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 violated.

AWARD

1. That the claim of the System Committee of the Brotherhood that the Carrier violated the terms of the currently effective working agreement when on October 20, 1954 it arbitrarily reduced the rate of pay on the posi-

tion of "Joint Facility Checker" in the office of General Auditor from a rate of \$379.03 per month to \$354.03 per month is sustained.

2. That the Carrier is here directed to reestablish the rate of pay of the position of "Joint Facility Checker" to the proper rate of \$379.03 per month retroactive to October 20, 1954.

3. That the Carrier shall compensate E. G. Olson and all other employees involved in or affected by this violation for all wages loss suffered on October 20, 1954 and each subsequent date thereafter until the condition shall have been corrected.

4. That a joint study shall be made by the parties to determine the names of persons and amounts properly due under (3) above.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois this 29th day of January, 1957.