



Award No. 15547
Docket No. MW-16325

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John H. Dorsey, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
(Coast Lines)

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

(1) The Carrier violated the terms of the Mediation Agreement dated November 20, 1964, when it applied the nine (9) cents per hour wage increase effective January 1, 1965 for monthly rated employes on the basis of 174 hours a month instead of 174 $\frac{1}{2}$ hours per month. (Carrier's File 130-160-13-1)

(2) The Carrier shall compensate each monthly rated employe on the Valley Division an additional six (6) cents per month effective with the month of January, 1965 and for all subsequent months.

EMPLOYES' STATEMENT OF FACTS: The factual situation involved in this dispute is fully described within the letter of claim presentation, which reads:

"Newton, Kansas
February 24, 1965

Mr. S. Rogers
Superintendent
AT&SF Railway
Fresno, California

Dear Sir:

We present herewith claim in behalf of each monthly rated employe on Valley Division as follows:

1. That the Carrier violated the terms of the Mediation Agreement dated November 20, 1964, when they applied the 9 cent per hour wage increase, effective January 1, 1965 for monthly rated employes on the basis of 174 hours a month instead of 174 $\frac{1}{2}$ hours.

9 cent per hour increase, effective January 1, 1965, making the new hourly factor 174 $\frac{2}{3}$ after the latter date in order to determine future wage increases. Thus, it will be seen that the Carrier fully complied with the provisions of Section 6(e) of Article II when it observed the formula prescribed therein in determining the new monthly rates.

What you have advanced as being the correct formula is directly contrary to the wording of the language appearing in Section 6(e) of Article II, which provides that—

‘In addition to the wage adjustment provided for in Article I of this Agreement, effective January 1, 1965, the monthly rates of monthly rated employees shall be adjusted by adding the equivalent of 8 pro rata hours to their annual compensation (the monthly rate multiplied by 12) and this sum shall be divided by 12 in order to establish a new monthly rate.’ (Emphasis ours.)

In view of the above, it is the position of the Carrier that the above-quoted language is clear and unambiguous. It can be interpreted in no other manner than the one followed by the Carrier in adjusting the monthly rates on January 1, 1965 for the classes of employees you represent, as well as those other covered employees who were similarly treated. Therefore, the claim in the instant dispute is without merit, and is respectfully declined.

Yours truly,

/s/ O. M. Ramsey”

The Board’s particular attention is directed to “Article I-Wage Increases, Section 2”, and “Article II-Holidays, Section 6(e)” of the November 20, 1964 Mediation Agreement, herein quoted, because these two provisions will be referred to from time to time in this submission and also because on these two provisions rest the Carrier’s contention that the Petitioning Organization has no basis for the claim they are making.

(Exhibits not reproduced.)

OPINION OF BOARD: We are petitioned to find the “number of hours comprehended by the monthly rate” effective January 1, 1965, by interpreting and applying the November 20, 1964 Mediation Agreement. The pertinent provisions of that Agreement are:

“ARTICLE I. WAGE INCREASES

Section 1. Effective January 1, 1964, all hourly, daily, weekly, monthly and piece-work rates of pay for employees covered by this agreement, other than employees represented by the Brotherhood of Railroad Signalmen, will be increased in the amount of 9 cents per hour applied so as to give effect to this increase in pay irrespective of the method of payment. The increase provided for in this Section 1 shall be applied as follows:

* * * * *

Monthly Rates.

Determine the equivalent hourly rate by dividing the existing monthly rate by the number of hours comprehended by the monthly rate. Nine cents per hour multiplied by the number of hours comprehended by the monthly rate shall be added to the existing monthly rate.

* * * * *

Section 2. Effective January 1, 1965, all hourly, daily, weekly, monthly and piece-work rates of pay for employees covered by this Agreement, other than employees represented by the Brotherhood of Railroad Signalmen, will be increased in the amount of 9 cents per hour, applied so as to give effect to this increase in pay irrespective of the method of payment. The increase provided for in this Section 2 shall be applied in the same manner as provided for in Section 1.

Section 3. Effective January 1, 1966, all hourly, daily, weekly, monthly and piece-work rates of pay for employees covered by this agreement, other than employees represented by the Brotherhood of Railroad Signalmen, will be increased in the amount of 9 cents per hour, applied so as to give effect to this increase in pay irrespective of the method of payment. The increase provided for in this Section 3 shall be applied in the same manner as provided for in Section 1.

ARTICLE II. HOLIDAYS

Article II of the Agreement of August 21, 1954, as amended by the Agreement of August 19, 1960, insofar as applicable to the employees covered by this Agreement, other than employees represented by the Hotel & Restaurant Employees and Bartenders International Union, is hereby further amended by the addition of the following Section 6:

Section 6. Subject to the qualifying requirements set forth below, effective with the calendar year 1965 each hourly, daily and weekly rated employee shall receive one additional day off with pay, or an additional day's pay, on each employee's birthday, as hereinafter provided.

* * * * *

(e) In addition to the wage adjustments provided for in Article 1 of this Agreement, effective January 1, 1965, the monthly rates of monthly rated employees shall be adjusted by adding the equivalent of 8 pro rata hours to their annual compensation (the monthly rate multiplied by 12) and this sum shall be divided by 12 in order to establish a new monthly rate.

* * * * *

It is agreed that the "existing . . . number of hours comprehended" in Article I, Section 1, for monthly rated employees was 174 per month. Carrier

says the same number of hours was comprehended in Article I, Section 2. Petitioner argues that: (1) the eight hours prescribed in Article II, Section 6(e), was to be divided by 12, the quotient to be added to 174, making the 1965 hours comprehended $174\frac{2}{3}$ per month; and, (2) Carrier violated the Agreement by applying the 1965, 9 cents wage increase to only 174 hours.

We know of no principles of contract construction which we can apply and resolve the dispute. We are faced with a factual issue: What was the intent of the parties? We are unable to make a finding as to intent because of lack of evidence in the record. Consequently, we must dismiss the Claim.

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

That the parties waived oral hearing;

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 Claim must be dismissed for failure of proof.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 5th day of May 1967.