



Award Number 17249  
Docket Number CL-17709

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**John B. Criswell, Referee**

**PARTIES TO DISPUTE:**

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

**KANSAS CITY TERMINAL RAILWAY COMPANY**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood that (GL-6451):

- (a) The Carrier has not properly applied the Agreement between the parties as amended by the provisions of Article 1, Section 1 (f) of the Mediation Agreement made December 15, 1966 (Case A-7948) to Ushers (Red Caps) employed at the Union Station, in accordance with the terms thereof; and,
- (b) As a result Ushers (Red Caps) have not been properly paid since the effective date of the Agreement, January 1, 1967, and have suffered and continue to suffer a wage loss as a result of the misapplication; and
- (c) That all Ushers (Red Caps) so affected, be compensated retroactively to January 1, 1967.

**EMPLOYEES' STATEMENT OF FACTS:** On December 15, 1966 Agreement was made by and between the participating Carriers and Employees represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, further identified as Mediation Agreement, Case A-7948 to become effective on January 1, 1967. This Agreement, among other things, included a wage increase of 5% to the existing rates of all employees represented.

It became evident on January 30, 1967 by complaints of Ushers (Red Caps) and substantiated by belated copies of bulletins reaching this office that the Carrier had not properly applied the wage increase effective January 1, 1967 as provided by the Mediation Agreement of December 15, 1966.

Study of the situation showed that the Carrier in applying the increase to Red Caps as provided in Article I Section 1 (f) applied the 5% increase only to the hourly rate and ignored all other rates of guarantees involved in the Red Caps basic pay structure.

Claim was filed in letter addressed to Station Master, Mr. P. L. Bolander, and denied by him on May 11, 1967. Appeal was made to Manager of Personnel, Mr. U. B. Leiwellyn, the highest officer of the Carrier to whom appeals could be made on May 19, 1967. Manager of Personnel, Mr. U. B.

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 being legally made as of August 31, 1941.

**(h) Application of Wage Increase—**

The increase in wages provided for in this Section 1 shall be applied in accordance with the wage or working conditions agreement in effect between each carrier and the Brotherhood of Railway & Steamship Clerks, Freight Handlers, Express & Station Employees. Special allowances not included in fixed daily, weekly or monthly rates of pay for all services rendered will not be increased.

**(i) Coverage—**

All employees who are on the payroll of the carrier on January 1, 1967, or who are hired subsequent thereto, shall receive the amounts to which they are entitled under this Agreement. Overtime hours will be computed in accordance with the individual schedules for all overtime hours paid for.

Prior to January 1, 1967, Red Caps on this Carrier were paid \$2.4408 per hour. In addition Red Caps were allowed 12¢ for each bag carried in excess of 30 during a tour of duty. The hourly rate of \$2.4408 was increased by 5% effective January 1, 1968, resulting in a rate of \$2.56284 per hour, and the 12¢ for each bag carried in excess of 30 per tour of duty was continued.

**OPINION OF BOARD:** The Organization contends that Carrier failed to properly apply an Agreement which would have increased the rate for bags carried by 5%.

It is the Carrier's position that the Mediation Agreement made December 15, 1966 (Case A-7948) did not apply to the per-bag figure, but only to the compensation based on hours worked.

We find the Agreement (April 5, 1939) between the parties says:

"Employees required to perform eight hours' service will be paid \$3.00 for eight hours service, or at the rate of 37 1/2 cents per hour, or ten cents per bag parcel or other personal effect whichever is greater."

Effective April 1, 1949, the rate of pay for Ushers became "37.5¢ per hour or 10¢ per bag whichever was greater plus 61¢ per hour."

In September, 1949, the 40-hour Work Week Agreement caused the rates to be adjusted to "45¢ per hour or 12¢ per bag plus 71.8¢ per hour."

In advertising Usher positions Carrier used the rate of pay:

"45¢ per hour or 12¢ per bag, whichever is greater, plus \$1.9908 per hour."

In denying the claim, Carrier said that Article 1, Section (F) of the December 15, 1966 agreement did not include the per-bag rate in excess of 30 during a shift as either an hourly rate or guarantee.

It must be considered when the contract is to be interpreted in a normal and usual sense that the per-bag rate is an integral part of determining the rate of pay; the Usher is guaranteed to be paid at an hourly rate or a per-bag rate "whichever is higher." No reasonable application of the 5% increase would exclude such a vital part of the pay formula.

The per-bag rate is a guarantee and we must uphold 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 hearings;

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 Agreement was violated.

#### A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 27th day of June 1969.

#### CARRIER MEMBERS' DISSENT TO AWARD 17249, DOCKET CL-17709

(Referee Criswell)

The parties to this case have stipulated that the case turns solely on whether the "per-bag" allowance is a "guarantee" or a "special allowance" within the meaning of those terms as contained in the Mediation Agreement dated December 15, 1966, Article I, Sections (f) and (h) of that agreement contain the following:

- (f) "Hourly rates of pay, or guarantees, for Red Caps will be increased by 5 percent."
- (h) "... Special allowances not included in fixed daily, weekly or monthly rates of pay for all services rendered will not be increased."

The "per-bag" allowance is not included in the "fixed daily, weekly or monthly rates of pay", and the very rules cited by the Employees conclusively establish that fact. Thus it is a special allowance as defined in the agreement.

The only reasons given in the award for finding that the "per-bag" allowance must be regarded as a guarantee and therefore included in the application of the 5 percent increase are that it "is an integral part of determining the rate of pay"; and that "the Usher is guaranteed to be paid at an hourly rate or a per-bag rate 'whichever is higher.' "

The obvious difficulty with this reasoning is that we are bound by the agreement which the parties made, and the parties did not adopt the test of "integral part of determining the rate of pay"; neither did the parties adopt a test of the particular payment being provided for in the agreement. It is elementary that every special allowance provided for in the agreement is both an integral part of the pay structure and payment thereof is guaranteed by the fact that it is provided for in the agreement. The fallacious reasoning adopted in the award could logically require the inclusion of the 5 percent increase in every special allowance that is provided for in the agreement.

This matter is discussed in detail in the memorandum which the Carrier Members handed the Referee when the case was discussed in panel and that memorandum is incorporated herein by reference.

We respectfully submit that the award is invalid for the reason that it manifests an infidelity to the agreement which the parties made. It manifestly rejects the test which the parties themselves adopted and adopts new and different tests which are inconsistent with that adopted by the parties.

/s/ G. L. NAYLOR

/s/ R. E. BLACK

/s/ W. B. JONES

/s/ P. C. CARTER

/s/ G. C. WHITE

LABOR MEMBER'S ANSWER TO CARRIER MEMBERS' DISSENT  
TO AWARD 17249, DOCKET CL-17709

(Referee Criswell)

By quoting Sections (f) and (h) of the December 15, 1966 Mediation Agreement, the Carrier Members attempt to persuade that the payment per bag is a "Special Allowance" and "not included in the fixed daily, weekly or monthly rates of pay."

The Carrier Members apparently overlooked that part of Appendix 1 of the current Agreement which reads in part as follows:

"Employees required to perform eight hours' service will be paid \$3.00 for eight hours service, or at the rate of 37 1/2 cents per hour, or ten cents per bag, parcel, or other personal effect, whichever is greater."

It is quite apparent that the cost per bag is a part of the hourly and daily rates of pay; therefore, the Award is proper and in consonance with the applicable Agreement.

/s/ C. E. KEIF

C. E. Keif, Labor Member

July 30, 1969

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