Award No. 688
Docket No. TE-624

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

William H. Spencer, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers, Southern Pacific Company, Pacific Lines, that effective June 16th, 1931, the occupant of the position of agent-telegrapher at Imlay is entitled to additional compensation over and above the monthly rate of $190.00 for Sunday and Holiday service performed, based upon the pro rata daily rate of each calendar month, using the working days of each calendar month in arriving at such pro rata daily rate."

EMPLOYES' STATEMENT OF FACTS: "Effective July 1st, 1930, the Representative of the Carrier and the representative of the Organization, parties to this dispute, fixed the rate of pay for the position of agent at Imlay, Salt Lake Division, at $190.00 per month.

"Effective June 16th, 1931, the Carrier, without conference and agreement with the representatives of the Organization, abandoned the agreed upon monthly rate of $190.00 per month for this position and arbitrarily set a rate of .8825 per hour for the position."

There is in evidence an agreement between the parties bearing effective date of September 1, 1927, as to rules and May 1, 1927, as to wage scale.

POSITION OF EMPLOYES: "The Carrier is in violation of the Agreement (Rule 45) and in violation of the Railway Labor Act in making this change in rate and method of pay (See Award TE-237, National Railroad Adjustment Board, Third Division, under caption 'Further Finding'—'Any changes, either in the basis of payment, or in the amount, of an agreed upon rate of pay should be by agreement').

"The Committee contends that inasmuch as the Carrier is without authority to make such changes and in the absence of any agreement between the parties to the dispute, no change has legally been made.

"Prior to the effective date of the establishment by the Carrier of the hourly rate of .8825 the position of agent, Imlay did not work Sundays or Holidays. Coincident with the establishment of the hourly rate by the Carrier, the employe was required to work seven days per week including Sundays and Holidays. This operated to reduce his average hourly rate of pay from .9313 under the monthly rate, to .8825 under the hourly rate, causing a substantial reduction in compensation to the employe. The proper rate being $190.00 monthly, the correct basis for figuring the employe's compensation is set up in EXHIBIT 1, this tabulation showing the balance due the employe or carrier each separate month over a period of time

be obvious to all reasonable men that the Petitioner is not consistent in the statements which he makes to this Board.

"If the monthly rate is proper, no additional compensation for Sunday and holiday work is due, according to Rule 44."

OPINION OF BOARD: The facts of this controversy, about which there is not any serious disagreement, are sufficiently stated both in the record of the present dispute and in the record of Award 239 of this Division, and need not be summarized here.

The carrier at the outset of its submission seriously urged that the Division has no jurisdiction over the claim for the reason that it has already disposed of it in its Award 239. It is not denied that the present claim is based upon the same factual situation as that involved in the previous award. It does not follow, however, that the doctrine of **res judicata** relied upon by the carrier applies in the present situation.

The doctrine of **res judicata**—a doctrine of the common law which embodies a perfectly sound principle of social policy—describes a situation in which "a point or question or subject-matter which was in controversy or dispute and has been authoritatively and finally settled by the decision of a court." It is admitted that the Division in its Award 239 did make certain findings with respect to the same factual situation involved here and did make certain statements with respect to its authority under the Railway Labor Act to dispose of the dispute. It is important to note, however, that the Division remanded the dispute "to the parties for negotiation of a proper hourly rate of pay, on the basis of the above findings." This direction, however, did not finally dispose of the controversy; it merely threw it back into the lap of the parties. The parties, being unable to compose their differences, are again before the Division. The Division is, accordingly, of the opinion that it never lost jurisdiction of the controversy and may consider the present claim without violating the doctrine of **res judicata** even if this doctrine should be regarded as having application to hearings before an administrative board.

Assuming that the doctrine in question is applicable, the Division in the present award will not disturb any of the findings or rulings which it made in Award 239. In fact it proposes to accept its previous findings and rulings and base its present award upon them.

A major contention urged by the carrier is that in adding telegraph duties to the work of the agent at Imlay, it created a new position, and that its only obligation in fixing the appropriate rate of pay for the new position is found in Rule 2 (b) of the agreement. In passing it may be noted that the carrier states that a fair application of the yardstick established by the rule just cited would disclose that the position at Imlay is even now too highly rated. However this may be, the Division reaffirms its finding in Award 239 that "the evidence does not disclose that it has been the custom to record* the adding of telegraph duties to an agent's position as creating a new position, nor, in the instant case, was a new position bulletined." On the basis of this finding, the Division concludes that Rule 2 (b) has no application to the present claim.

The record indisputably indicates that the monthly rate of the agent at the station at Imlay was fixed by agreement between the parties. In this respect the Division reaffirms its fiindings in the previous award that "the evidence in this case shows that the monthly rate of the position of agent at Imlay was fixed by negotiation between the parties....." In brief, whatever may have been the right of the carrier on its own initiative to have

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* The Division agrees that this word should be "regard."

fixed the rate of pay at this station, subject, of course, to the provisions of Rule 2 (b), the Division in the previous award found that the parties did reach an agreement for a monthly rate of $190.00 for the occupant of the position of agent at the station involved.

The Division reaffirms its ruling in the previous award that since the monthly rate was reached by negotiation, "this division holds that the same is a proper procedure for arriving at an hourly rate under the circumstances of this case." Further, said the Division, "any changes, either in the basis of payment or in the amount of an agreed upon rate of payment should be by agreement." The Division also reaffirms its finding that there is no "rule or agreed upon practice in effect for the conversion of hourly to monthly rates or vice-versa."

The Division, having arrived at this point in its analysis of the dispute in the previous award, might have taken one of two courses of action. It might have ruled that the carrier, having violated its agreement with the petitioner, should properly compensate the employe injured thereby. The Division did not adopt this course of action presumably because the petitioner affirmatively asked for the establishment of an hourly rate.

The Division had the alternative of remanding the controversy to the parties for the negotiation of a rule for the conversion of monthly rates into hourly rates. The Division took this course of action and is still of the opinion that it was a justifiable course of action at the time. If the parties could have reached an agreement relating to conversion of rates, the agreement would not only have served to settle existing controversies but would have furnished a guide for the settlement of similar controversies in the future. Unfortunately the parties were unable to reach such an agreement.

The Petitioner is now before the Division, not asking for the establishment of an hourly rate, but asking for the restoration of the status quo which prevailed before the unauthorized action taken by the carrier in 1931, and for the loss sustained by the claimant as a result of that unauthorized action. Why may not the Division now take this course of action—a course of action which it might have taken when it previously had this controversy before it?

The carrier strongly urges that the rules of the agreement do not justify the contention of the petitioner that the claimant be paid compensation for Sundays and holidays in addition to his monthly rate of $190.00; that the monthly rate includes full compensation for all services required during a given month. In support of this contention the carrier cited Rule 44 which provides in part that "monthly rated positions are exempt from hours of service, overtime, and call rules." This language makes no reference to work on Sundays or holidays. The carrier insists, however, that overtime is exempt, and that service on Sundays and holidays is overtime both within the meaning of this rule and within the meaning of Rule 6. While the Division doubts the validity of this interpretation, it elects to rest its decision here on other grounds. The record clearly indicates that the carrier has in the past required monthly rated employes to work on Sundays and holidays, and has paid them for such service. The carrier admitted that an employe would be disciplined if he should refuse to work on a Sunday or a holiday when so assigned. In these circumstances, the Division is of the opinion that Rule 44 not only does not prohibit the payment of the present claim but affirmatively supports the position of the petitioner.

The carrier urged further that an award sustaining the present claim will necessarily involve the establishment of a daily rate for Sundays and holidays; that the rules of the agreement make no provision for such conversion; and that this Division has already passed judgment on this issue. The Division here reaffirms its position in Award 239 that the agreement between the parties does not contain any rule "for the conversion of hourly

to monthly rates or vice-versa." In this dispute, however, the petitioner is not asking for a conversion rule and is not even asking for a daily rate for work performed on Sundays and holidays. The petitioner is merely asking for reasonable compensation for the days on which the claimant was required to work in violation of an agreement between the parties.

The carrier contends finally—and in terms of the present analysis, the Division must paraphrase the argument of the carrier—that there is no rule in the agreement by which to determine the reasonable value of services required in violation of the agreement. The Division cannot believe that an employe, entitled to compensation for a persistent violation of an agreement, must be denied relief because the agreement contains no particular formula for determining the reasonableness of the compensation to which he is entitled. In an action at law for the breach of a work contract which does not specify the rate of compensation, the court would permit the plaintiff to recover the reasonable value of his services. The question of what would be reasonable in the circumstances would, generally speaking, be a question for the jury under the instructions of the judge. To assist the jury in computing compensation, the judge would admit various types of evidence to show the reasonable value of the services involved—the prevailing rates of pay for similar services in the community, what the defendant has paid other employes for similar services, or what he has paid the plaintiff for similar services in the past. Quite aside from past practice, a court of law would undoubtedly say that an hourly rate computed on the basis of the monthly stipend and the number of hours normally worked during a month would furnish a fair yardstick for determining a reasonable compensation for days worked in excess of the agreement. This, in substance, is what the claimant is asking for in the present dispute.

The fairness of this method of determining a basis for compensation for the violation of the agreement is attested by the fact that the carrier has in some instances employed it in situations comparable to that in dispute. The case of Frank H. Jones covered by the record is in point. The record indicates that the carrier used this method of allocating a wage increase to certain monthly rated employes. The Division in its Award 239 states that "it also appears that a factor of 204 was generally used in these conversions." The Division concludes that the method contended for by the petitioner is a fair yardstick for ascertaining the reasonable value of the services required of the claimant in violation of the agreement between the parties.

In reaching this conclusion, the Division is not announcing any rule for the conversion of monthly rates into daily rates. It is merely defining a basis for the ascertainment of the compensation to which the claimant is entitled for the days worked in violation of the agreement. The award does not obligate the carrier in the future; it merely furnishes a basis for remedying past violations of the agreement. It is still the privilege of the carrier, if it wishes to exercise it, not to assign the claimant to work on Sundays and holidays. It is still the privilege of the carrier under Award 239 to negotiate with the petitioner for a basis of converting monthly rates into hourly rates which will guide it in dealing with similar situations which may arise in the future. In the meantime, however, it should compensate the claimant for the loss sustained by him as a result of the violations of the agreement. It follows that there is no inconsistency between this award and the award which the Division rendered in Award 239.

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 action of the Carrier in changing the agreed-upon rate of pay of the position of agent at Imlay, without conference and agreement with the Committee, was in violation of the agreement between the parties.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 13th day of July, 1938.

DISSENT ON AWARD 688—DOCKET TE-624

The Opinion of the Board included in this Award does not disclose with any preciseness from what premises it proceeds. By repeated use of such expressions as "days.....required to work in violation of the agreement," "services required in violation of the agreement," etc., the first false premise is set up that the agreement prohibits working incumbents of some positions on Sundays and holidays, whereas there is no such prohibition contained in the agreement. The only restriction is in Rule 6 (a) that telegraphers will not be required to work on **holidays** except when necessary to protect the company's interests. That rule was not invoked in this case.

The Opinion seems to proceed upon the further false assumption—at least it is the inference to be drawn from it—that the claimant received no compensation for Sunday and holiday work, where as the claimant's own evidence shows payment for Sundays and holidays worked; for some of them at a rate higher than claimant is contending for.

Through a circuitous and unsound course of reasoning the Opinion now arrogates to the Board an authority which it had previously disclaimed. It assumes that the Board had an acceptable alternative to its action when remanding the case in Award 239, and now proceeds to adopt that alternative; it ignores the fact that the Board, by the action that it did take, was rejecting the alternative by the judgment of its regular members. While purporting not to disturb any of the rulings or findings of the Board in Award 239, it, nevertheless, does repudiate, absolutely, the Board's action in remanding that case and assumes authority to fix rates and bases of pay under the pretext of "defining a basis for the ascertainment of compensation for days worked in violation of the agreement."

The background of the instant case is to be found in the Board's Docket TE-194, Award 239, and a perusal of that Award is necessary to a complete understanding of the discussion of the instant Award. Both parties to the instant case made the record in Docket TE-194 a part of the record in this Docket TE-624.

In Docket TE-194, the petitioner invoked Rules 4 (a) and 45; the carrier urged Rules 2 and 44 in support of its action. In the instant case the petitioner claims a violation of Rule 45, covering the term and procedure for modifying or terminating the agreement. The carrier relies on Rules 2 and 44 as in Docket TE-194.

The agent at Imlay was reclassified by the carrier from agent (non-telegraph) to agent-telegrapher, and appropriately he was then placed on an hourly rate of pay. (As to the right of the carrier to reclassify positions see Third Division Award No. 644). Thereafter he was assigned to work his regular week day tour of duty on Sundays and holidays. As the Board said in its Further Finding in Award 239, it did not appear to have been the custom to regard the adding of telegraph duties to an agent's position, under such circumstances, as creating a new position. Manifestly, however, had the agent not been a qualified telegraph operator, the change in his duties, assigning telegraphing as a part of them, would have created a new position necessitating bulletin.

The employes in Docket TE-194 asserted that no new position was created and none was bulletined, to which the carrier made answer that by common understanding it had not been the custom to bulletin positions affected by a reclassification as in the instant case. The Finding of the Board in Award No. 239 was consistent with the former practice and cannot be said to decide whether the reclassified position was or was not a new position. The Board did find that by assigning telegraph duties to the agent his classification was changed. The parties could have agreed or had a mutual understanding that under the circumstances of the reclassification of the agent's position at Imlay a new position, in effect, was created but that it would not be bulletined if the agent was a qualified telegrapher. That, in effect and in substance, is the understanding the carrier asserts did exist. Had the employes accepted that view of the situation, a case would have existed falling squarely under Rule 2 (b) of the agreement, and it would have been within the scope of the authority of this Board to determine, on proper evidence, whether the hourly rate established for the reclassified position was a proper one.

The claim as presented to the Board in Docket TE-194 was "that in changing the rate of pay for the agent at Imlay from a rate of $190 a month to an hourly basis, a rate of $0.9313 per hour should have been applied....." It was urged that a factor of 204 should have been used as a divisor of the monthly rate of $190 to establish the hourly rate, instead of applying the rate of $0.8325 which the carrier said it did under Rule 2 (b). The Board declared in that case that in the absence of a rule for the conversion of monthly to hourly rates it was without authority to make one, and the monthly rate of pay having been established by negotiation, that was the only procedure for converting it into an hourly rate. In other words, the Board declared it had no authority to fix rates of pay by any method not provided for in the agreement. The instant claim proceeds from the assumption that the $190 monthly rate is still in effect at Imlay, and the Board is asked to award the incumbent of the position additional compensation for Sunday and holiday service at a rate of pay to be determined by dividing the monthly rate by the number of working days in each month separately. The Board found itself without authority to establish an hourly rate of pay for this position, and the reasoning resorted to in the Opinion falls far short of supplying any sound basis for clothing the Board with authority to fix a daily rate, a basis of compensation repugnant to the agreement which provides that, but for certain agreed exceptions, all employes shall be paid on an hourly basis. The exceptions are those positions covered by Rule 44, paid on a monthly basis.

The eighth paragraph of the Opinion states that the Division, having arrived at the findings it did in Award 239, might have taken either one of two courses of action. It says the Board might have ruled the carrier violated the agreement and should properly compensate employes injured thereby, but that it did not adopt that course of action, which is presumed to be because the petitioner **affirmatively** asked for the establishment of an hourly rate. No conclusion could be on firmer ground: this Division when functioning without a referee has never issued an Award that was not

responsive to the claim and that was not based on the rules of the agreement.

The Opinion further states that the other alternative remaining to the Board was to remand the controversy to the parties "for the negotiation of a rule for the conversion of monthly rates into hourly rates," and that the Division took this course of action. This statement is at variance with the plain language of Award 239. This Board found that there was no rule for the conversion of monthly into hourly rates and that it was without authority to supply one. It recognized that the case could be disposed of by the parties even without such a rule, and it remanded the case to the parties—**not** for the negotiation of a rule, but for the negotiation "of a proper hourly rate of pay."

The twelfth paragraph of the Opinion reaffirms the statement in Award 239 that there is no rule in the agreement for the conversion of hourly into monthly rates or vice versa, and states that the petitioner here is not asking for a conversion rule. It may be added also that the petitioner in TE-194 did not ask for a conversion rule. But the Opinion continues that he is not "even asking for a daily rate for work performed on Sundays and holidays." The language of the claim is that the claimant be paid additional compensation for Sunday and holiday service "based upon the pro rata daily rate of each calendar month, using the working days of each calendar month in arriving at such **pro rata daily rate.**" (Emphasis supplied). How could the petitioner have been more specific? He prescribed a formula for determining a daily rate, and he asked that it be applied to compensate claimant for Sunday and holiday service performed. The statement quoted from the Opinion is at variance with the words of the claim.

The reasoning followed up to this point appears to be laying the groundwork for the wholly unwarranted paraphrase of the carrier's argument, to make it say that there is no rule in the agreement to determine the reasonable value of services required in violation of the agreement. The carrier's argument does not proceed from the premise that there has been a violation of the agreement. On the contrary the carrier's argument proceeds from the premise that the position was properly classified and the method of rating provided in the agreement was applied. The Opinion proceeds to describe the procedure in an action at law for breach of a work contract which does not specify the rate of compensation, and it says that in such a case various types of evidence would be admitted to show the reasonable value of the services involved; the prevailing rates for similar services in the community; what the defendant had paid other employes for similar services or what he had paid the plaintiff for similar services in the past. This is virtually the substance of Rule 2 (b) of the current agreement between the parties. The Opinion here says, in effect, that the principle laid down in the agreement for application to newly created positions would be a safe principle to apply in determining the proper rate of compensation for Sunday and holiday work. Sight must not be lost of the fact that the claimant in this case has been paid for every Sunday and holiday worked at the rate of $0.8825 per hour (prior to wage adjustment of August 1, 1937, but subject to percentage deduction agreements in effect during the years 1932-35, and since August 1, 1937, subject to wage adjustment effective that date). The evidence is that the Sunday and holiday work was full eight-hour assignment. By the formula of court procedure recommended in the Opinion, we should then test the reasonableness of the rate paid the claimant. Evidence for such a test is at hand in carrier's Exhibit "A" in Docket TE-194, introduced to sustain its contention that the hourly rate applied at Imlay met all the requirements of Rule 2 (b). If it met those requirements as being the rate of comparable positions in the same seniority district, it also met the requirement that a court would invoke, as claimed by the Opinion, of being the prevailing rate for similar service in the community (seniority district) and the rate the defendant has paid other employes for similar services. The carrier in its Exhibit "A" makes

a comparison of the work, duties, responsibilities, and revenues of Imlay, with other stations in the same seniority district, which tends to show that the hourly rate established at Imlay meets the requirements of Rule 2 (b).

The stations cited by the petitioner, Globe and Miami, are not in the same seniority district as Imlay. If the reasoning of the Opinion had followed along the lines of recommended court procedure it might have taken cognizance of the evidence submitted and have tested the hourly rate the claimant received for his Sunday and holiday work in the light of the principles laid down. Can there be any doubt of the answer? But the Opinion continues that aside from past practice a court of law would undoubtedly say that an hourly rate computed on the basis of the monthly stipend, etc., would furnish a fair yardstick; ignoring completely that the monthly stipend, formerly in effect, was not for work of the character now performed by the claimant and that such a computation could not yield, therefore, a fair yardstick.

The Opinion concedes that the fairness of this method (the hourly rate computed from the monthly stipend) is attested by the fact that the carrier in some instances has employed it in situations comparable to this dispute. As pointed out, the only evidence of the employment of any such method by the carrier was in circumstances where a monthly rated agent was required, as result of heavy train movement, or for some special reason, to perform routine work on Sunday for short periods encompassed within a two-hour call. As a basis for compensation under those circumstances payment was made in the case represented by the petitioner's Exhibit at Globe, Arizona, on the basis of one and one-half times the quotient obtained by dividing the monthly rate by 204. That situation was not comparable to that in the instant dispute.

The Opinion continues that the Division in Award 239 found that a factor of 204 was generally used in conversion of monthly into hourly rates. The Division also found in Award 239 there was nothing to indicate how the parties determined the monthly rate of $190 in lieu of the former hourly rate, and I think the inference is clear that had the Board been informed how the hourly rate was converted into a monthly rate at this station, it would have been disposed to have applied the same method in converting from a monthly to an hourly rate. Without that information, however, it found it necessary to remand the case to the parties to negotiate an hourly rate. After enlarging upon the use of 204 as a factor for determining the hourly rate on a monthly rated position, the Opinion reaches the conclusion that the method contended for by the petitioner is a fair yardstick. The method contended for by the petitioner, however, is not the 204 factor method, nor does it produce any such consistent results as that method would produce.

The petitioner's exhibit 1 sets up for each month during each year from June 16, 1931, through September, 1936, the amount claimed as compensation for the Sunday and holiday work, based upon a monthly rate of $190 and applying the formula recommended in the claim. The daily rates vary from $7.037 in October, 1931, to $7.91 in November of that year. In 1932 they vary between $7.037 in March to $7.91 in February. In 1933 they vary between $7.037 in March to $8.26 per day in February, and so on through the five years and three months covered by the Exhibit. In the month of February, 1933, for instance, we find that the claimant feels entitled to $231.30 for the twenty-eight day month. But in March, 1933, working thirty-one days, he feels entitled only to $218.15, and he actually owes the company 71 cents! His pay at the rate of $0.8825 per hour was 71 cents more than it would have been by applying the formula asked for in this claim. And so he reaches the anomalous result that sometimes the carrier was damaged and sometimes the employe. If the claimant is "merely asking for reasonable compensation for days required to work in violation of the agreement," how reliable is the yardstick whose application determines that when

paid at the rate of $7.06 per day ($0.8825 per hour) in the month of February, 1933, he was underpaid $33.62, whereas, being paid at the same rate in the following month he was overpaid 71 cents?

In Docket TE-194 the petitioner asked this Board to convert a monthly into an hourly rate in accordance with a specific formula. The Board found itself without authority to adopt the formula and settle the dispute, because there was no rule in the agreement by which it could convert a monthly into an hourly rate, or—in the absence of such a rule—any agreed-upon practice. It therefore remanded the case to the parties for negotiation of a proper hourly rate. In the instant case the claimant asks that the Board assume the former $190 monthly rate to be still in effect and direct the carrier to pay for Sunday and holiday work at a "pro rata daily rate," to be determined by the formula prescribed in the claim. Notwithstanding that there is no reference whatever in the entire agreement to a daily basis of pay, and notwithstanding that the agreement itself requires that all employes under it shall be paid on an hourly basis unless specially excepted, the majority Opinion chose to treat this claim as though it were one for punitive damages, and so far as the Opinion of the Board would indicate the claimant has been required to work Sundays and holidays without any compensation whatever. Such is not the case. The claimant received compensation for every day that he worked at the rate of $0.8825 per hour during straight time hours. The Opinion goes to great lengths, item by item, to pay its respects to Award 239, and disclaims either the intent or the effect of repudiating it. And yet, under the guise of compensating the claimant for time worked "in violation of the agreement," of which there is not one scintilla of evidence in the record, it clothes the Board with authority to sanction a method of payment for which there is no precedent in rules or in practice, in utter repudiation of the Board's Award 239, rendered without the aid of a referee, and it achieves the absurd result described above whereby for some short months the claimant is found to be due additional compensation, while for other longer months he must hand back to the carrier some of the money already paid him. Apparently anticipating that the result achieved may ultimately be repugnant to the claimant, the Award deals not with the future but with the past. "It merely furnishes a basis for remedying past violations." It does not find that the daily rate method of paying for Sunday and holiday work is a proper or appropriate one for the future; on the contrary it denies any such intent, and with respect to any final disposition the dispute is no nearer a solution, so far as any action of this Board is concerned, than it was when it was first heard by this Board under Docket TE-194, in October, 1935.

In accounting for the failure to negotiate a proper hourly rate of pay as directed by Award 239, the petitioner stated that the carrier maintained its former position that the hourly rate established was a proper one; the carrier stated that the General Chairman insisted that the carrier pay the agent on the basis contended for in Docket TE-194 to some date not stated to the Board, as a condition precedent to negotiation of a rate for the future. Without looking into the failure of the parties to carry out the mandate of Award 239 beyond these bare statements, the majority now, in effect, endorses and sustains the position of the General Chairman and says that for the past the carrier shall pay as now demanded; for the future it may negotiate a rate as required by the Board's previous award. This Award does not dispose of the dispute or progress its adjudication.

/s/ GEO. H. DUGAN

The undersigned concur in the above dissent:

/s/ A. H. JONES
/s/ R. H. ALLISON
/s/ J. G. TORIAN
/s/ C. C. COOK