

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Dozier A. DeVane, Referee.

PARTIES TO DISPUTE:

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

NEW ORLEANS PUBLIC BELT RAILROAD

STATEMENT OF CLAIM: "Claim of William H. O'Connor for (1) restoration of rate of \$5.46 per day on position of Clerk, Cotton Warehouse; (2) reimbursement of wage loss represented by difference between \$5.46 and \$4.72 per day retroactive to March 1, 1936 and (3) compensation at the rate of time and one-half on the rate of \$5.46 per day for all overtime worked in excess of 8 hours per day retroactive to March 1, 1936."

EMPLOYEES' STATEMENT OF FACTS: "Agreement governing hours of service, rates of pay, working conditions, etc., was entered into by and between the above named parties to this dispute dated and made effective March 1, 1936."

"Prior to March 1, 1936 Mr. Wm. H. O'Connor had been, for several years, the regular incumbent of the position classified and known as Clerk, Cotton Warehouse. The basic rate of \$5.46 per day was established as the rate of said position effective as of October 1, 1933. (See Employees' Exhibit A attached hereto and made a part hereof).

"Said basic rate of \$5.46 per day was in effect on March 1, 1936, the effective date of the agreement between the two parties as hereinbefore set out.

"Prior to March 1, 1936 said Wm. H. O'Connor was required to work on said position 8 or more hours, usually 9 hours, per day, 365 days per year.

"On March 6, 1936, without notice to or conference with the duly designated and authorized representatives of the employees, the carrier reduced the daily rate of Clerk O'Connor from \$5.46 to \$4.72 per day.

"Since March 6, 1936 Clerk O'Connor has been assigned and required to work 9 hours per day, 365 days per year, excepting on Sundays and holidays when he is assigned to work regularly 8 hours per day.

"Clerk O'Connor and his representatives immediately protested the arbitrary reduction in his basic rate of pay and carried up to the highest designated officer of the railroad his claim for restoration of the basic rate of \$5.46 per day with reimbursement for all wage losses."

CARRIER'S STATEMENT OF FACTS: "An agreement governing hours of service, rates of pay, working conditions, etc., was entered into between Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees and the New Orleans Public Belt Railroad (herein-

"The purpose of Rule 1, Section II, and Rule 2, Section III, is to establish and maintain 8 hours as a basic day.

"The reduction of the rate of Clerk O'Connor's position was intended to nullify and resulted in a nullification of those two rules.

"Employees contend the rate of \$5.46 should be re-established as the proper basic rate for the position in question and all overtime worked should be computed on that basis, all of which employees contend should be computed retroactively to March 1, 1936."

POSITION OF CARRIER: "It seems clear to us that every line of the Contract between the parties has been adhered to by the Railroad. Clerk O'Connor has misconstrued the facts with regard to his case. On the effective date of the Contract, the working day was made eight hours per day, exclusive of meal time. All rates of pay whatsoever were to be changed to a daily basis. However, in the change from monthly, weekly or hourly bases, a rate of pay either more or less favorable than in effect before the effective date of the Contract was not to be established.

"Before the Contract became effective, Clerk O'Connor was making \$5.46 per day for doing nine hours' work. In order that Clerk O'Connor might earn the same wages, and that the Contract might be complied with, the Railroad agreed to pay him \$4.72 for an eight-hour day, plus 88½¢ an hour overtime, on which basis Clerk O'Connor was still working nine hours per day, and for which nine hours of work he was to receive \$5.60½. Taking this pay of \$5.60½ for nine hours of work for normal week days in connection with eight hours or less which are normally worked on Sundays and holidays under Rule 1, sub-paragraph (e) of Section 2 of the Contract, and for which he is allowed \$4.72 per day, it will be seen that Clerk O'Connor is paid under the contract an amount substantially the same as prior to the Contract. In other words, whereas he was paid prior to the contract \$5.46 per day or \$1,992.90 per annum, he is now paid under the Contract \$1,992.73 per annum, a difference of 17¢ per annum, which certainly shows that the Contract is neither more nor less favorable, either to the employee or the Railroad.

"We respectfully submit that Clerk W. H. O'Connor has set forth in his complaint no basis whatsoever for a grievance, and, therefore, his complaint should be dismissed."

OPINION OF BOARD: The evidence in this case discloses that when the current agreement between the parties became effective March 1, 1936, the position of Belt Clerk, Cotton Warehouse, occupied by William H. O'Connor, was paid on a daily basis, rated \$5.46 per day. The record further discloses that the incumbent was required to work nine hours or more per day on week days, and on Sundays and holidays nine hours or less. The position was originally paid on a monthly basis at the rate of \$166.07 per month, and when it was converted to a daily basis the daily rate was obtained by dividing the annual payment by 365.

Rule 1 of Section III is as follows:

"Employees subject to the provisions of this agreement heretofore paid on a monthly, weekly or hourly basis, shall be paid on a daily basis. The conversion to a daily basis of monthly, weekly or hourly rates, shall not operate to establish a rate of pay either more or less favorable than is now in effect.

"Nothing herein shall be construed to permit the reduction of days for the employees covered by this Section, below six (6) per week, excepting that this number may be reduced in a week in which holidays occur by the number of such holidays."

According to the record in this case, only O'Connor and one other employee was paid on a daily basis prior to the effective date of the current agreement. No showing is made by the carrier that in the conversion to a daily basis of monthly, weekly or hourly rates that account was taken of the time in excess of eight hours worked by said employees. In fact, so far as the record shows, time worked in excess of eight hours was taken into consideration only in the cases of the two employees paid on a daily basis. This constituted unjust discrimination against O'Connor. He should not be required to suffer a reduction in his daily basis of pay merely because his compensation had been converted to a daily basis prior to the effective date of the agreement.

Taking O'Connor's monthly rate of pay before conversion into a daily basis, which had not been changed since conversion, and applying thereto the rule laid down in the agreement and used in determining the daily basis for other employees theretofore paid on a monthly or weekly basis, gives \$5.46 per day. Under the agreement, that rate of pay should have continued for eight hours of service. All time in excess of eight hours should have been compensated for at overtime rates.

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 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 carrier violated the agreement between the parties, as contended by the petitioner.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Ill., this 7th day of October, 1938.