Award No. 1557
Docket No. CL-1630

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

E. L. McHaney, Referee

PARTIES TO DISPUTE:

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

FLORIDA EAST COAST RAILWAY

(W. R. Kenan, Jr., and S. M. Loftin, Receivers)

STATEMENT OF CLAIM: "Claim of the System Committe of the Brotherhood that:

(1) The Carrier has violated and is continuing to violate Item 2 of Mediation Agreement dated December 20, 1937, by reducing the number of hours below that agreed upon as constituting the basis of a day's work for the nineteen positions covered by Item 2 of the Mediation Agreement, and

(2) That the Carrier be required to maintain the hours agreed upon as constituting a basic day and compensate incumbents of the positions for not less than the number of hours agreed upon as constituting a day's work, and, further

(3) That employes involved in or affected by said violation of Item 2 of the Mediation Agreement be compensated in full for monetary losses resulting from the Carrier's actions."

EMPLOYES' STATEMENT OF FACTS: "When the current working agreement was negotiated, there was also negotiated a Mediation Agreement, dated December 20, 1937, copy of which is attached hereto as Employes' Exhibit 'A,' Item 2 of which covers the conversion from a monthly to a daily basis of pay of the following nineteen positions:

Chief Yard Clerk	Bowden
Asst. Chief Yard Clerk	Bowden
Chief Yard Clerk	New Smyrna Beach
Chief Yard Clerk	West Palm Beach
Chief Yard Clerk	Buena Vista
Teller-Accountant	Jacksonville
Warehouse Foreman	Jacksonville
Steno-Clerk, Supervisor B. & B.	St. Augustine
Gatemen (Stationmaster)	St. Augustine
Cashier	Daytona Beach
M. of W. Clerk, Roadmaster	New Smyrna Beach
Utility Clerk	Fort Pierce
Cashier	Fort Pierce
Warehouse Foreman	Fort Pierce
Cashier	West Palm Beach
Warehouse Foreman	West Palm Beach
Chief Claim Clerk	Miami
Chief Rate Clerk	Miami
Chief Revising Clerk	Miami

"The Carrier again denies that there was any violation of Item 2 of the Mediation Agreement; strongly asserts that the National Mediation Board found that there was no such violation, which is supported by the interpretation issued by that Board February 13, 1940, (Carrier's Exhibit 34); that, therefore, no employes are entitled to any additional compensation; that the record shows the incumbents of certain positions have enjoyed substantial increases in compensation, and that the record further shows the Carrier is suffering an increase in expenses for the nineteen positions, in the aggregate, due to changing conditions since the beginning of 1940. The record quite definitely portrays the fact that conferences between representatives of the Brotherhood and the Carrier developed a definite understanding in August, 1938, (Carrier's Exhibit 24), more than eight months after the rate conversion, that the situation would be allowed to continue without change for the remainder of the year of 1938, for further study by the interested parties. It is also quite clear that upon completion of that period of observation the Brotherhood invoked the services of the National Mediation Board, to have an interpretation placed upon Item 2 of the Mediation Agreement, and that the National Mediation Board, upon issuing that interpretation February 13, 1940, declared that Item 2 of the Mediation Agreement had been properly applied, and suggested the parties confer further in an effort to modify the conversion formula which they had previously employed by mutual agreement. Further, conferences were held but no modification of the formula could be agreed upon. It is, therefore, the contention of the Carrier that any further handling of this question should be through the processes of mediation, if necessary, under the auspices of the National Mediation Board, and that recourse cannot be had by the Brotherhood to the National Railroad Adjustment Board. In the event the National Railroad Adjustment Board assumes jurisdiction of this dispute, notwithstanding the Carrier's challenge of jurisdiction, this claim should be dismissed for want of merit."

OPINION OF BOARD: Only a question of the jurisdiction of this Board is here presented. Section 5, First of the Railway Labor Act provides:

> "The Parties, or either party, to a dispute between an employe or group of employes and a Carrier may invoke the services of the Mediation Board in any of the following cases:
>
> "(a) A dispute concerning changes in rates of pay, rules, or working conditions not adjusted by the parties in conference.
>
> "(b) Any other dispute not referable to the National Railroad Adjustment Board and not adjusted in conference between the parties or where conferences are refused.'

Section 5, Second, of the Act provides:

> "In any case in which a controversy arises over the meaning or application of any agreement reached through mediation under the provisions of this Act, either party to said agreement, or both, may apply to the Mediation Board for an interpretation of the meaning or application of such agreement. The said Board shall upon receipt of such request notify the parties to the controversy, and after a hearing of both sides give its interpretation within thirty days."

A dispute between the parties arose over the question of changes in rates of pay, rules and working conditions, and the services of the Mediation Board were invoked under Section 5, First, and after hearing said Board issued Mediation Agreements, Cases A-403 and A-404, the latter only being here involved. Item 2 of that Agreement and the formula are:

> "It is understood and agreed in the conversion of any monthly rated positions to daily rates, necessitated by the agreement referred to in Item 1 above that such rates will be converted on the basis of all hours actually worked by the incumbents concerned during the

twelve months last available prior to conversion, so as to produce a daily rate that will not operate to increase or decrease the present average monthly earnings after applying all compensation rules, including overtime."

"If overtime should in the future be increased one hour a day, the annual earnings would increase $351.83 per year or if overtime should be decreased one hour a day, the annual earnings would decrease $351.83 per year."

This agreement was reached December 20, 1937, and promptly thereafter representatives of the parties made a joint check of the hours of service performed by the incumbents of the nineteen positions here involved, for the calendar year 1937, for the purpose of converting the monthly rate into daily rates, in accordance with the agreed formula. Joint work sheets were prepared and signed and were then used to make the necessary mathematical calculation for producing a daily rate, a pro rata overtime rate, and a time and one-half overtime rate, for each position involved, in accord with the formula, and there is no dispute about the correctness of the work sheets. The converted rates became effective January 1, 1938.

In actual practice, some of these positions earned less while others earned more. The Organization being dissatisfied as to the results, filed application with the Mediation Board, under Section 5, Second, for an interpretation of the meaning or application of said Item 2, above quoted, and, after a hearing, issued Interpretation No. 8, Case A-404, as follows:

"Since, therefore, the requirement of Item 2 of the agreement that a daily rate be established by the methods provided in this item, which rate will not operate to increase or decrease monthly earnings previously enjoyed, cannot be realized so long as the hours beyond eight worked subsequent to conversion may with propriety be increased or decreased, and since changing operating conditions have apparently made it necessary for the carrier to change these hours, was quite within its province, the Board is of the view that these circumstances make it necessary for the representatives of the parties again to meet in conference in an effort to modify the formula which they previously employed by mutual agreement in their attempt to effect the conversion from a monthly to a daily rate called for by Item 2."

Conferences were thereafter held, but no agreement was reached to modify the formula.

It appears to this Referee that this is simply unfinished business before the Mediation Board. The formula is a part of Item 2 of the agreement reached through Mediation. It was again referred to the parties in an attempt to have them reach an agreement on a new formula. Not having done so, the question is still one for the Mediation Board and the parties to work out a formula, if possible, that will produce a result in accordance with said Item 2. This Board has no such jurisdicition.

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

That the Board is without jurisdiction.

AWARD

Claim dismissed for lack of jurisdiction.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 13th day of August, 1941.