Award No. 1609
Docket No. CL-1598

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Bruce Blake, Referee

PARTIES TO DISPUTE:

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

READING COMPANY

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood, that the Carrier violated and continues to violate the rules of the existing agreement when it continues in effect, certain bonus or piece work arrangements, and that such bonus or piece work arrangement be discontinued."

EMPLOYES' STATEMENT OF FACTS: "Prior to April 1st, 1937, the Carrier had in effect, a tonnage arrangement of payment, which was paid to certain employes working on the freight platform at Reading Transfer, Reading, Pa.

"An agreement was entered into between the Reading Company and the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, governing the hours of service and working conditions of Clerical, Other Office, Stores and Station employes, effective April 1st, 1937, and this agreement covers employes at Reading Transfer, Reading, Pa., as well as all others similarly employed.

"Rule No. 65 of the agreement of April 1st, 1937 provides:—

> 'This Agreement shall supersede existing agreements and shall become effective April 1, 1937, and will remain in effect for One (1) year and thereafter, until it is changed as provided herein or under the provisions of the Amended Railway Labor Act.
>
> 'Should either party to this Agreement desire to revise or modify these Rules, written advance notice, containing the proposed changes, shall be given and the first conference shall be held within thirty (30) days from date of notice. Further conferences, if necessary, shall be held promptly and in compliance with the provisions of the Amended Railway Labor Act.
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> 'Pending final settlement of any dispute, these Rules shall remain in effect.'

"Subsequent to April 1st, 1937, the Organization has insisted on the abolishment of the tonnage arrangement for the employes on the Reading Transfer platform, above referred to, but the Management declines and fails to comply with the terms and provisions of the existing agreement."

POSITION OF EMPLOYES: "Since the effective date of the present agreement, it has continually been the position of the employes that this

change in such basis **was not made** when the Agreement of April 1st, 1937 was negotiated, Carrier is clearly of the opinion that there is no merit in request for discontinuing it simply because it was not established through agreement negotiations with the present representation.

"Further, there are other bases of pay in effect, such as **daily** rates, not specified in Rule No. 24 to be continued, and the Brotherhood of Railway and Steamship Clerks has not protested them or contended that Rules No. 24 and No. 65 automatically abolished them.

"Carrier holds, therefore, that there is nothing in the Agreement negotiated with the Brotherhood of Clerks which requires a change in the basis of pay in effect at the time the Agreement was negotiated. Any desired change can only be brought about through the process set up by the Railway Labor Act, as above.

"With respect to Rule No. 65:

"The Committee contends that the portion reading—'This Agreement shall supersede existing agreements' automatically operates to abolish the 'tonnage system' as in effect.

"As pointed out in Statement of Facts, prior agreement—'Exhibit A'—makes no reference to established rates of pay, or to any method to be followed in establishing **any** basis of pay, but left same entirely in hands of Carrier; therefore **there was no agreement** with respect to 'tonnage basis' **to be superseded** by the terms of Rule No. 65 and it therefore is not applicable.

"In view of the foregoing, Carrier requests—

"**First:** That the claim be dismissed by the Board as outside its jurisdiction under the Railway Labor Act amended;

"**Second:** That if the Board takes jurisdiction, the claim be denied—as no rules of the effective Agreement prohibit 'tonnage' payments and no rules of the Agreement have been violated."

OPINION OF BOARD: The only question for determination is whether the handling of freight at the Reading Transfer platform on a tonnage rate basis is, by necessary implication, banned by the agreement between the Carrier and the Organization effective April 1, 1937. Certainly there is no express provision in the agreement prohibiting that method of payment. The parties agree that the subject was not discussed during the negotiations leading up to the agreement. The Organization asserts that it did not know that a "tonnage rate" arrangement was in force at Reading until after the agreement had been consummated. From this admission it is fair to infer that, had the Organization been cognizant of the arrangement, the matter would have been given consideration in the negotiations; and an attempt would have been made to prohibit the practice by express terms of the agreement.

The argument of the Organization is that, notwithstanding the "tonnage rate" had been in effect continuously at Reading since 1922, it had not been legally established under the terms of the Transportation Act of 1920. Abstractly, this contention finds some support in Decision 3431 of the Railroad Labor Board, which held that a **change** from a daily rate of pay to a piece-work basis could not be effected without prior conference and agreement. There is, however, no analogy between the facts of that situation and this. Here there has been no **change** from a daily to a piece-work rate since the effective date of the current agreement. That decision would have been apposite had the employes or their representatives protested the arrangement prior to April 1, 1937 when the Brotherhood for the first time became the representative of the employes. The fact that the "tonnage rate" may have been illegally initiated does not constitute a violation of the current agree-

ment unless, by its express terms or by necessary implication, such arrangement is prohibited, nor can the decision referred to serve as authority for reading any such prohibition into the agreement.

When the present agreement was negotiated, the "tonnage rate" had been in effect at the Reading Transfer platform for fifteen years. Whether the Organization knew about it is immaterial. It is chargeable with knowledge of the working conditions and rates of pay existing at the time the agreement was negotiated. If it wanted the practice abolished the matter should have been made the subject of negotiation and agreement; and that is the only recourse the Organization now has. The Board cannot reform or alter the terms of the agreement. To read Rules 17, 24, and 63 as the Organization would have us read them would be to inject into the agreement a meaning that is not expressed and cannot be inferred by any fair—much less, necessary—implication.

Our conclusion finds ample support in the following awards of the Third Division, i. e., 383, 389, 1257, 1568; and in Award 5826 of the First Division.

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 there has been no violation by the carrier of the existing agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 25th day of November, 1941.