

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward M. Sharpe, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
THE NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY**

STATEMENT OF CLAIM: Claim of Employees' Committee:

First, that by charging Extra Gang Laborer W. L. Halcomb and other Extra Gang Laborers, and deducting from their wages 3 cents per hour for board, effective as of March 1, 1941, the Carrier violated current Agreement; particularly, that part of Appendix "A" of the Agreement which reads: "Extra Gang Laborers .33 per hour—Plus Board."

Second, that W. L. Halcomb and all other Extra Gang Laborers shall be paid 36 cents per hour, **plus board**, effective as of March 1, 1941.

Third, that Extra Gang Laborers employed by this Carrier who have been charged 3¢ per hour for Board and from whose wages deductions were made, shall be reimbursed in the total amount thus deducted, retroactive to March 1, 1941.

EMPLOYEES' STATEMENT OF FACTS: In conformity with the provision of the Agreement in effect, reading "Extra Gang Laborers .33 per hour—Plus board," Extra Gang Laborers were, prior to March 1, 1941, paid the hourly rate specified and, in addition thereto, were receiving their board free of charge to them.

Effective March 1, 1941, the Carrier began to charge its Extra Gang Laborers 3 cents per hour for board.

The Agreement in effect between the Carrier and the Brotherhood of Maintenance of Way Employees is, by reference, made a part of this Statement of Facts.

POSITION OF EMPLOYEES: Under date of February 14, 1941, the Administrator, Wage and Hour Division, U. S. Department of Labor, issued an order establishing minimum wages in the Railroad Industry, from which we quote:

"Part 591—Minimum Wage Rates in the Railroad Carrier Industry." * * *

"Section 591.2 Wage Rates

(a) Wages at a rate of not less than 36 cents an hour shall be paid under Section 6 of the Act by every employer to each of his employees in the Trunk Line Division of the Railroad Carrier Industry who is engaged in commerce or in the production of goods for commerce;

* * *

That the petitioner's complaint is a claim of violation of the Fair Labor Standards Act and not of the contract is completely demonstrated by the fact that except for the Fair Labor Standards Act of 1938, its interpretation and effect, the Carrier admittedly is complying with the agreement.

IV

The Third Division in its Award 1228 of November 14, 1940, recognized that it was without jurisdiction in questions involving compliance with or violation of the "Fair Labor Standards Act of 1938," wherein the Division stated in its findings in said award: "... but this Board has no concern regarding the compliance with or violation of that Act."

It is the very definite opinion of the Carrier that it is fully and honestly complying with the provisions of the "Fair Labor Standards Act of 1938," and the Carrier respectfully submits that if the petitioner or any individual employe holds a contrary view, this is a question to be decided by a court of proper jurisdiction and not by the National Railroad Adjustment Board or any Division thereof.

V

The Carrier has shown that its contractual obligations under the applicable agreement of November 1, 1940, are being fully complied with. It is therefore obvious the claim is without merit and should be dismissed.

* * * * *

The Carrier also reserves the right to introduce and examine witnesses in support of its position in connection with all issues in this case and to cross-examine witnesses who may be introduced by the petitioner, as well as to answer any further or other matters advanced by such petitioner in relation to such issues, whether oral or written.

In consideration of all of which, the Carrier respectfully asks, first, that the purported claim be denied and/or dismissed for lack of jurisdiction, and, second, if considered on the merits, that it be denied in all respects.

OPINION OF BOARD: It appears that the Agreement became effective November 1, 1940. Under the terms of the Agreement extra gang laborers were paid at the rate of 33¢ per hour plus board; that under date of February 14, 1941, the Administrator of the Wage and Hour Division, United States Department of Labor issued an Order effective March 1, 1941, as follows:

"Part 591,—Minimum Wage Rates in the Railroad Carrier Industry." * * *

"Section 591.2 Wage Rates

(a) Wages at a rate of not less than 36 cents an hour shall be paid under Section 6 of the Act by every employer to each of his employes in the Trunk Line Division of the Railroad Carrier Industry who is engaged in commerce or in the production of goods for commerce;

* * *

"Section 591.5 Effective Date

This Wage Order shall become effective March 1, 1941."

and that on and succeeding the date of March 1, 1941 the carrier began to charge extra gang laborers 3¢ per hour for Board.

It is the position of the employe that such charge is in violation of the Agreement effective November 1, 1940 as modified by the Order of the Administrator.

It is the position of the carrier that under sub-section (m) of Act 3 of the Fair Labor Standards Act the carrier may include as wage the reasonable cost of the facilities (Board), customarily furnished to the extra gang laborers; that the amount so charged is a reasonable amount and that the reasonableness of such charge is solely a question for the Administrator to pass upon.

It is well established that the function of this Board is limited to interpreting and applying the rules agreed upon by the parties, (See Award 1589), nor has this Board any concern with violations of the Fair Labor Standards Act, (See Award Nos. 1228 and 1229).

It is also well established that the Federal Act modified the Agreement effective August 1, 1937 for persons who prior to that time were receiving a wage of less than 36¢ per hour. (See Award No. 1712.)

The principle involved in this case is the same as in Award 1726 adopted in Docket No. MW-1765. The attempt of the carrier to charge for Board is a violation of the Agreement effective November 1, 1940.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice and 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 carrier violated the Agreement effective November 1, 1940.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 26th day of February, 1942.

Dissent to Award 1727, Docket MW-1766

The undersigned disagree with the conclusions reached and know of no reasons in the facts or the law supporting the award.

/s/ R. F. Ray
/s/ C. P. Dugan
/s/ A. H. Jones
/s/ R. H. Allison
/s/ C. C. Cook