Award No. 2237
Docket No. CL-2202

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Fred L. Fox, Referee

PARTIES TO DISPUTE:

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

DULUTH, MISSABE AND IRON RANGE RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes that the carrier violated the Clerks' Agreement when it reduced rates of pay of Leo K. Braun and Einar Johnson, Weighmasters at Proctor Scales, Proctor, Minn., and

(a) That established Winter rates, $175.00 per month, applying to positions occupied by Weighmasters Braun and Johnson prior to December 9, 1941, be restored, and to such rate the increase of $20.40 per month provided for by National Wage Agreement effective December 1, 1941, shall be applied, and

(b) That Weighmasters Braun and Johnson be compensated for wage loss suffered from December 9, 1941 to March 27, 1942, both dates inclusive, the difference between the rate of $160.40 per month as applied by the carrier, and rate of $195.40 per month.

EMPLOYES' STATEMENT OF FACTS: The two positions involved in this dispute for several years prior to December 9, 1941 carried Summer or ore season rates of $225.00 and $215.00 per month respectively, and a Winter rate of $175.00 per month in each case. At the termination of the ore season effective December 9, 1941 the carrier applied Winter rate of $140.00 per month to each of these positions and to this $140.00 rate the increase provided for in the National Wage Agreement effective December 1, 1941 was applied, making the Winter rate of each position $160.40 per month.

POSITION OF EMPLOYES: There was in effect an agreement between the parties dated April 16, 1941 and the following rules therein read:

Rule 37—Preservation of Rates

"Rates of pay for positions covered by this agreement which are now in effect shall become a part of this agreement and shall remain in effect until changed by mutual agreement between the parties hereto."

Rule 38 (b)—Rates Discontinued

"Established positions shall not be discontinued and new ones created under a different title covering relatively the same class of work for the purpose of reducing the rate of pay or evading the application of these rules."

For reasons given in the Position of the Carrier we respectfully request that the Board deny this claim.

OPINION OF BOARD: The principal business of the carrier is that of transporting iron ore from the mines to ports of shipment over the Great Lakes. Its business is seasonable in the sense that in the winter season, when the lakes are frozen, shipments decline to a minimum, and then consists almost entirely of supplies for those who operate the iron mines. For this reason, a practice has grown up of making a distinction in the rates of pay of its employes as between the summer season, when the lakes are open, and ore traffic moves freely, and the winter season when no such traffic exists. The carrier employed a Chief Weighmaster and an Assistant Weighmaster at Proctor, Minnesota, and, prior to December 1, 1941, the basic rate of pay for these positions, for the summer season, was $225.00 and $215.00 per month, respectively, with no provision for overtime prior to April 16, 1941. A subsequent increase of wages, effective December 1, 1941, increased the rate of pay to $245.40 and $235.40, respectively, based on an eight hour day, for six days a week, with provision for overtime pay at one and one-half of the basic pay. The winter rate of pay, prior to December 1, 1941, was $175.00 per month, with no provision for overtime prior to April 16, 1941, which the subsequent increase raised to $195.40, should the $175.00 rate be applied.

The current agreement became effective on the 16th of April, 1941. Beginning with the year 1937, and continuing through the years 1938, 1939 and 1940, the rates of pay, $225.00, and $215.00, for summer work, and $175.00 for winter work, remained in effect. When the current agreement was made, providing for overtime, no reference was made therein as to rates of pay, either for summer or winter work, except that rule 37, relating to preservation of rates, provides:

> "Rates of pay for positions covered by this agreement which are now in effect shall become a part of this agreement and shall remain in effect until changed by mutual agreement between the parties hereto."

and this rule, the petitioners contend, incorporated in the agreement, and protected, the existing wage scales for both the summer and winter seasons.

The position of the carrier is that the current agreement made a radical departure from the agreement it superseded. It says that, whereas, under the former agreement, the wage scales were fixed on a monthly basis, without regard to overtime, under the current agreement it was required to pay for overtime work at considerable expense. Shortly after the effective date of the current agreement, it notified petitioners that their basic rate of pay for the winter season would be reduced to $140 per month, which, with the increase, would make the wage $160.40 per month, not considering overtime. It attempts to justify this position by saying that petitioner's positions during the winter season were, in fact, those of commercial weighers, the basic rate of pay for which, before the increase, was $140.00 per month, and it explains the payment of $175.00 per month to each of the petitioners for winter work, by saying that because they had not been paid for overtime work in the summer, under the former agreement, the additional $35.00 per month was paid to them as a bonus. There is nothing in the record showing that at the time payments of $175.00 were made any part thereof was treated as a bonus by either the carrier or its employes. It is obvious, therefore, that in order to justify the reduction in pay the petitioners must be held, as to winter work, to be commercial weighers, and their pay justified under rule 36 of the Agreement which provides:

> "Positions (not employes) shall be rated and the transfer of rates from one position to another shall not be permitted."

It seems to be conceded that as to the summer season petitioners were classified as Chief Weighmaster and Assistant Weighmaster, respectively, and paid as such. While it is admitted by petitioners that winter work is lighter, they contend that both summer and winter require the same type of experience and the same readiness to serve. The differences between summer and winter work, while they do exist, are not, in our opinion, sufficient to justify a change in classification. We think, therefore, that petitioners were, respectively, Chief and Assistant Weighmasters during the entire year, and that the attempt to demote them for the winter season to the position of commercial weighers was a violaion of Rule 38 (b) of the Agreement, which reads:

> "Established positions shall not be discontinued and new ones created under a different title covering relatively the same class of work for the purpose of reducing the rate of pay or evading the application of these rules."

While, as we believe, petitioners' positions remained the same throughout the year, recognition of the seasonal volume of the work to be done, led to what seems to have been mutually agreed upon, namely, a reduction in pay during the winter months. This practice had been followed by the carrier and accepted by the petitioner for such a time as to come within the term "rates of pay" referred to in Rule 37 of the Agreement and justifies a continuation of the distinction in rates of pay as between summer and winter seasons. But we think the $175.00 rate of pay for winter work was a "rate of pay" covered by the Agreement and no part thereof was a bonus. Being established as a "rate of pay" no change therein could be made except by mutual agreement between the parties. That the carrier had the hope that a new agreement as to rates of pay could be negotiated, is apparent from the letter of Superintendent Ledin to Vice President Van Hoven, under date of December 8, 1942, in which he says:

> "In discussing the matter with the employes I also suggested that if they cared to take the matter up with the committee representing the Clerks' Organization it might be possible to arrive at an agreement under which the former practice which had been in effect for years of paying them a certain salary during the ore shipping season to cover all services performed and to give them winter work at a salary of $175.00 per month as had been done during previous winters would be continued."

Such negotiations would have been within the letter and spirit of the agreement, and should have been pursued, rather than the course taken, which, in effect, deprived petitioners of what we think were their rights, and then used this action in an attempt to bring about a restoration of the situation which the current agreement was designed to, and did, change.

In our opinion, the agreement of April 16, 1941, was not intended to, and did not, change the existing rates of pay. On the contrary, it, in effect, established them. What was done was to provide for payment for overtime. If this change called for some adjustment in the basic rates of pay, that was a question for negotiation between the parties.

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 carrier in reducing the basic rate of pay of the positions from $195.40 per month to $160.40, for winter work, violated the current agreement.

AWARD

Claim (a) sustained.

Claim (b) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 4th day of August, 1943.