

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 Employees that the carrier violated the Clerks' Agreement when it reduced rates of pay of Charles V. Dailey, Yard Clerk, and S. Gerard, Ore Sorter, at Proctor Yard Office, Proctor, Minn. and

(a) That established Winter rate of \$175.00 per month applying to positions occupied by Yard Clerk Charles V. Dailey and Ore Sorter S. Gerard prior to December 9, 1941 be restored, and to such rate the increase of \$20.40 per month provided for by National Wage Agreement December 1, 1941 shall be applied, and

(b) Yard Clerk Dailey and Ore Sorter Gerard be compensated for wage loss suffered from December 9, 1941 to March 27, 1942 both dates inclusive, the difference between rate of \$160.40 per month as applied by the carrier and rate of \$195.40 per month.

EMPLOYEES' 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 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 by National Wage Agreement effective December 1, 1941 was applied, making the Winter rate of each position \$160.40 per month.

POSITION OF EMPLOYEES: 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."

practice to rate the individual rather than the job, a thing which is prohibited under the new agreement of April 16, 1941 but which did not violate any provision of the agreement then in effect. After the agreement of April 16, 1941 became effective allowing punitive rates on the summer jobs of claimants for all overtime worked, the Carrier advised the committee that it no longer felt that there would be any justification in continuing the past practice of paying a bonus for their winter work and that in the future they would be paid the fixed or established rate applicable to whatever job they occupied unless the employees through their committee would agree to the flat salary basis for the summer months as heretofore.

The Organization refused to give the matter favorable consideration whereupon the employees involved were properly notified by the Superintendent that effective with the close of the 1941 ore shipping season any winter work which they might get would have to be secured entirely on their seniority under the agreement rules and at the established rates of the respective positions occupied by them. As proof of this statement, copy of letter of Superintendent A. L. Ledin is attached hereto and made a part of this submission as Carrier's Exhibit "A."

Finally, the Carrier wishes to point out that there was nothing unsound or irregular about this decision because when the new rules changed the flat rate basis and required the payment of all overtime worked it resulted during the summer months in the payment of overtime amounting to \$361.49 in 1941 and \$144.00 in 1942 to Yard Clerk Dailey, and \$212.46 in 1941 and \$201.51 in 1942 to Ore Sorter Gerard. The payment of overtime we claim automatically erased the condition for which the bonus payment on winter assignment was justified and so long as the Carrier paid the established rate of the job occupied which is standard practice on all railroads, there could exist no violation of agreement rules.

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

OPINION OF BOARD: The question raised in this dispute is the same as that presented in docket CL-2202, Award No. 2237, and the same decision must be made.

Petitioner Dailey was employed as yard clerk at Proctor, Minn., and Petitioner Gerard was employed as ore sorter at the same place. The rate of pay for summer work in these positions, prior to December 1, 1941, was \$225.00 and \$215.00, respectively, and the winter rate \$175.00, for each employee, with no provision for overtime prior to April 16, 1941. A new wage scale, effective December 1, 1941, increased the rate of pay \$20.40 per month as to both positions, and as to summer and winter work.

By the current agreement, effective April 16, 1941, payment for overtime work was provided for, and shortly thereafter the Carrier notified petitioners that the basic rate of pay for winter work would be reduced to \$140.00 per month, which the wage increase raised to \$160.40, on the contention that the work petitioners performed during the winter season was, in fact, that of commercial checkers, the rate of pay therefor being the amount proposed to be paid.

No change in pay for summer work is proposed. The payment of the \$175.00 rate for winter work through the years 1937 to 1940 is explained by the Carrier's statement that inasmuch as no payment was made for overtime work in said years, a bonus of \$35.00 per month was voluntarily paid.

It will be seen, therefore, that exactly the same question is here presented as that considered in Award No. 2237, and what was said in that award applies to this dispute.

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.