Award No. 3155
Docket No. CL-3160

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

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

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY,

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY OF TEXAS, (Berryman Henwood, Trustee)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(a) Carrier violated agreement bearing date of March 25, 1935, when on May 16, 1944, it failed and has since refused to establish a rate of $10.086 per day on position of Chief Clerk, Record Room, Office of Superintendent of Transportation, Tyler, Texas, and

(b) That rate of $10.086 per day be established on such position and the occupant compensated for all wage loss resulting from this violation retroactive to May 16, 1944.

EMPLOYES' STATEMENT OF FACTS: On March 25, 1935, an agreement was entered into placing the Clerical employes in the office of Superintendent of Transportation under the agreement with the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, and converting monthly rates to daily rates, effective April 1, 1935. (See Exhibit A.)

On April 1, 1935, all positions in the office of Superintendent of Transportation covered by the agreement referred to above were converted to a daily basis by using 306 as the divisor, with the exception of the position of Chief Clerk, Record Room, which it was agreed would remain excepted while occupied by the man then incumbent, Mr. E. E. Florence. Upon the death of Mr. Florence May 15, 1944, request was made upon the Carrier to place the position on a daily rate on the same basis as the other positions in that office had been converted to daily rate. The Carrier refused, it being their contention that the position should be converted to a daily basis by using 365 as the divisor.

POSITION OF EMPLOYES: All other positions in the office of Superintendent of Transportation were converted to a daily rate by using 306 as the divisor. The position now in dispute was no exception other than that the provisions of the agreement were not to become effective as long as occupied by the then incumbent, Mr. E. E. Florence. Upon the death of Mr. Florence the position of Chief Clerk, Record Room, was subject to all the provisions of

pensation, but $905.36 would not necessarily be the maximum, since neither of these figures include any overtime other than on Sundays and holidays. Any time worked outside assigned hours on weeks days would further increase his annual compensation over that now received.

Thus the fact is clear that the Employes are asking that the position be paid more per year for the same work. They are asking that the compensation be increased at the very least by $226.56 a year, or approximately 7%. This is certainly in conflict with Rule 62.

In their letter July 12, 1944 (Exhibit No. 1) the Employes stated:

> "In view of the fact that all other monthly rated positions in that office were converted to a daily rate on the basis of three hundred six working days per year, there is not any question but that the Chief Clerk Record Room position was included on the same basis with the other positions, but not to become effective until the position was vacated by Mr. Florence."

The other positions referred to are not similar to that of the chief clerk, record room. It has been an excepted position since first placed in effect. It was established in April 1920 at a monthly rate to compensate for all services rendered, and has been monthly rated at all times subsequently. Thus it has never been under the Clerks' Agreement. The other positions were under the Clerks' Agreement in April 1920, and were daily rated, being later changed to monthly rates at request of employes occupying the positions. Also, the duties of the other clerks were such that they could usually be performed by working six days a week. That is not the case with the position now under consideration. The duties to which assigned require work each and very Sunday and holiday; not because of an accumulation of the ordinary week day work, but because the car tracers, etc., must be handled daily.

The salary was set up to compensate for the Sunday and holiday work. That was one of the reasons why the rate was $208.25 as of March 25, 1935, compared with $121.95 paid the highest rated clerk supervised. The supervisory duties and character of the work performed are not such as to justify that difference were it not for the Sunday work.

Had there been any intention to use 306 days a year as the basis for conversion of all the positions, or, in other words, to adjust the rates, undoubtedly provisions to that effect would have been included in the letter agreement. The fact that no basis for conversion was specified clearly shows that it was to be made in accordance with Rule 62, which read then the same as now.

Therefore, the Employes' claim that the daily rate be established by multiplying the monthly rate by 12 and dividing by 306 is not supported by the rule. Neither does the letter agreement support their claim that conversion be made on basis of the rates in effect March 25, 1935, subsquent increases being added to bring the daily rate up to date. They state in their letter of June 26, 1945 (Exhibit No. 7) that this would be equivalent to converting a present monthly rate of $257.21. The letter agreement clearly contemplated that conversion be made after the position was vacated by Mr. E. E. Florence. The rate in effect at that time (May 16, 1944) was $260.75. The Carrier has offered to establish the daily rate by multiplying this monthly rate by 12 and dividing by 365, which produces a daily rate of $8.57. (Erroneously shown as $8.46 in Carrier letter July 24, 1945, Exhibit No. 8). This will produce substantially the same annual compensation that is received under the monthly rate, and this is fair and reasonable in every respect, and in full compliance with Rule 62, and letter agreement of March 25, 1935.

For these reasons, the Carrier respectfully requests that the Employes' claim be denied.

OPINION OF BOARD: Effective as of April 1, 1935, certain positions in the office of the Superintendent of Transportation were removed by agreement from the status of excepted positions and placed under the current Agreement between the parties. All of the positions thus brought under the Agreement

were converted from the monthly rate theretofore paid to a daily rate except that of the Chief Clerk, Record Room. With respect to that position it was agreed that it should continue at the established monthly rate as long as the position was held by the present incumbent. On May 16, 1944, the then incumbent of the position died and the Organization contends that it should be converted from the monthly to the daily rate as agreed. With this the Carrier is in accord but insists that the daily rate of the position should be arrived at by multiplying the present monthly rate by 12, and dividing the product by 365, thereby fixing the daily rate at $8.57. The Organization contends that the daily rate should be arrived at by multiplying the present monthly rate by 12, and dividing the product by 306, thereby fixing the daily rate at $10.09.

The applicable rule is Rule 62 of the Agreement effective October 16, 1939, which provides:

> "Employes covered by groups (1) and (2) rule 1, heretofore paid on a monthly, weekly or hourly basis shall be paid on a daily basis. The conversion to a daily basis of monthly, weekly, or hourly rates shall not operate to establish a rate of pay either more or less favorable than is now in effect."

It is the contention of the Carrier that the position has always been a seven day a week job and that the monthly rate was based on that fact. The Organization contends that all the other positions in this office converted to the daily rate as of April 1, 1935, were treated as 306 day a year positions and that the present one should be so considered.

It is clear that the intent of Rule 62 is that the actual yearly income of the position should be the same after conversion to a daily rate as it was on a monthly basis. In other words, no increase or loss of pay was to result because of the conversion of the position to a daily rated one.

The Carrier asserts that the position in question is regularly assigned to work Sundays and holidays, and that is has been so assigned since it was first established in 1920. It asserts also that the compensation was set on a basis that included Sunday and holiday work. A comparison of the monthly rates of other employes in this office with those of the present position tend to sustain this assertion. On the other hand, when pay increases were authorized in 1937, 1941 and 1944 in the amounts of 5, 10 and 9 cents per hour respectively, the Carrier applied them on the basis of 306 work days per year. It is true that when this controversy arose, the Carrier readjusted the last wage increase on a basis of a 365 day year. While the application of wage increases appear to have been inconsistent with the present position assumed by the Carrier, there appears to have been no objection voiced by the Organization or the occupant of the position. But these facts are not controlling in the face of the rule providing that "the conversion to a daily basis shall not operate to establish a rate of pay either more or less favorable than is now in effect."

The record in this case establishes that this position was compensated on a basis of $260.75 per month for 306 eight hour days and three hours work on all Sundays and holidays in each year. The three hours worked on those days are the equivalent of approximately 22 eight hour days. Consequently, the occupant of the position actually worked 328 eight hour days in each calendar year and received therefor the gross sum of $3,129.00, a daily rate of $9.54.

In converting a monthly rate to a daily rate that is neither more or less favorable than the monthly rate of pay, the proper formula is to multiply the monthly rate by 12 and divide the product by the number of eight hour days actually worked under the assignment. While the rate thus fixed in the present case will not produce a gross return of $3,129.00 on the basis of 306 days, such gross amount will be earned annually by the incumbent of the position if the Snday and holiday work is required to be performed as in the past. We do not think there can be a compliance with Rule 62 on any other basis. See Award No. 2830 and Interpretation No. 1 to Award 2830 (Serial No. 56).

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 parties waived oral hearing thereon;

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 current Agreement was violated to the extent shown in the Opinion.

AWARD

Claim (a) and (b) sustained on the basis of a daily rate of $9.54.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 28th day of March, 1946.