

Award No. 3158
Docket No. CL-3107

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

UNITED TRANSPORT SERVICE EMPLOYES OF AMERICA
CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY

STATEMENT OF CLAIM: Violation of the intent and purpose of Memorandum Agreement dated February 25, 1944 as regards the payment of retro-active pay from February 1, 1943 to February 25, 1944 to red cap employees covered by the agreement between the carrier named and this organization, effective September 1, 1940.

EMPLOYES' STATEMENT OF FACTS: On September 25, 1942 this organization, through its international president, addressed a letter to Mr. F. H. Allard, chief operating officer of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company presenting a formal notice of desire to change the existing agreement to provide among other things, an increase in rates of pay. Specifically the proposal to increase rates of pay read as follows: "That all rates now in effect be increased 20¢ an hour provided that no employees shall be paid a rate of less than 70¢ an hour. Piece work, tonnage or other methods of payment to be adjusted to give effect to these proposed increases." (full text of this formal notice is submitted as Exhibit A of this document).

Subsequent to the filing of this notice of desire to change wage rates and other portions of the agreement, a conference was held with management on October 15, 1942. The decision of management following the conference was a denial of the requested increased rates of pay. The other demands presented in the formal notice of September 25, 1942 were withdrawn by common agreement, except the request for joint national handling of the wage question.

Specifically management's decision as regular national handling of the wage question was as follows: "Insofar as your request for concerted handling is concerned will advise that we are not agreeable, but are agreeable to applying to the employees you represent the same disposition as is applied to the employees represented by the fifteen non operating organizations." Management's letter of decision appears in detail as Exhibit D of this document). This decision, or offer of a standby agreement by this organization by letter of January 5, 1943. (Full text of this letter of acceptance is reflected by Exhibit E of this document).

January 20, 1944, a letter was addressed by this organization to Mr. Allard asking that the standby agreement as accepted by letter of January 15, 1943 be implemented by a supplement to the existing contract encouching the terms of the wage agreement of the 15 non operating brotherhoods.

which the red caps were to share in the revenue derived from the handling of baggage, excluding the expense of compensating red caps, other than the rate of the Chief red cap. Likewise Items A and B on page 3 of the Memorandum of Agreement dated February 25, 1944, (Carrier's Exhibit "B") established the rate of pay of red caps in conformity with Section 1(a) thereof and Item E on page 3, continues in effect the same arrangement as that provided for in Item 3 of the Memorandum of Agreement effective September 1, 1940.

The investigation made by the Carrier developed the fact that station red caps at Milwaukee and Minneapolis were paid from December 1, 1941 to January 31, 1943, inclusive, 46¢ per hour and, in accordance with the provisions of Item 3 of the Memorandum of Agreement effective September 1, 1940, equally participated in the revenue derived from the handling of baggage, exclusive of the expense of the wages of the hourly rated red caps, the further fact that such red caps were paid from February 1, 1943 to December 26, 1943, inclusive, 56¢ per hour, and in accordance with provisions of item E of the Memorandum of Agreement dated February 25, 1944, equally participated in the revenue derived from the handling of baggage, exclusive of the expense of the wages of the hourly rated red caps, and the further fact that such red caps were paid, effective December 27, 1943, 57¢ per hour and also in accordance with the provisions of Item E of the Memorandum of Agreement dated February 25, 1944, equally participated in the revenue derived from the handling of baggage, exclusive of the expense of the wages of the hourly rated red caps.

As previously indicated there is no disagreement between the employees and the Carrier concerning the fact that the red caps have been paid as indicated in above paragraph, nevertheless, the employees contend that a different method of payment should have prevailed during the period February 1, 1943 to the date the Memorandum of Agreement was negotiated on February 25, 1944.

It is the Carrier's position that the Memorandum of Agreement of February 25, 1944, constitutes an agreement setting up the manner in which wage increases were to be applied to the rates of red caps effective February 1, 1943 and December 27, 1943, that the rates have been adjusted strictly in accordance with the provisions of that Agreement that there is no basis for the claim presented and respectfully requests same be declined.

OPINION OF BOARD: The facts and contentions of the parties in this case are so fully set forth in their respective submissions that they will not be repeated here. Briefly stated, the case turns upon the interpretation and application of the Memorandum of Agreement of February 25, 1944, Carrier's Exhibit "B".

The record discloses that this Memorandum of Agreement has been applied in accordance with its written terms, and the claim must be denied.

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 employees involved in this dispute are respectively carrier and employees 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 controlling agreement has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

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