Award No. 4060
Docket No. CL-3894

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

GREAT NORTHERN 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 Employes' Wage Agreements dated April 4, 1946 and May 25, 1946:

1. When they improperly applied Sections 1, Article (d) of both Agreements.

2. That the Carrier now be required to properly apply these Agreements as of the effective dates of January 1, 1946 and May 22nd, 1946.

EMPLOYES' STATEMENT OF FACTS: On Oct. 1, 1945, the Employes served formal notice on the Carrier in accordance with the provisions of Section 6 of the Ry. Labor Act as Amended, reading, in part, as follows:

> "Please accept this as formal notice served in accordance with the provisions of Section 6 of the Railway Labor Act as Amended, of our desire to change rates of pay as hereinafter stated for all employes we represent effective Nov. 1, 1945."

The first conference in connection with this notice was held between the Employes and the Carrier on Thursday, Oct. 25, 1945, at 10:00 A. M. The conference was held and confirmed by the Assistant to the Vice President on Oct. 30, the letter reading as follows:

> "St. Paul 1, Minn., Oct. 30, 1945.
>
> "Mr. F. A. Emme, General Chairman, Bro. of Ry. & SS Clerks.
> St. Paul 1, Minn.
>
> "Dear Sir:
>
> Referring to conference held in my office Oct. 25th in connection with formal notice contained in your letter of Oct. 1, 1945, of your desire to change rates of pay by establishing basic minimum rates for I.C.C. classifications, as set forth in that letter, and to such basic rates so established and all rates in excess thereof, to add $.15 per hour.
>
> "Our conference also included discussion of the proposals contained in Attachment "A" sent you with my letter of Oct. 8, 1945.

such a method there would be no inconsistency in the application of an award on this base even if it would be held applicable to such employe.

However, as previously stated, the Carrier holds that by agreement the employes waived any right to jurisdiction over the rates of pay applicable to employes covered by Rules 3(a) and 3(b) of the schedule, when, through negotiation as provided for in the Railway Labor Act, they specifically agreed that they were not subject to the rules governing rates of pay. In other words, the rates of pay, duties and responsibilities of such positions may be changed at will by management, the only restriction being that work of employes now fully covered by schedule rules may not be added to that of the incumbents of positions covered by Rules 3(a) and 3(b). Hence, it follows that as far as positions covered by Rules 3(a) and 3(b) are concerned, management was not obligated by agreement to make any change in their rates of pay by reason of the awards referred to herein, nor, having chosen to grant some increase as a matter of equity as was done in this case, is their any provision in the schedule which would prohibit management from rescinding such increase in whole or in part nor from adding to it at any time.

In this case, as in numerous others, we find the Employes before your Board trying to gain by Board award concessions they were unable to negotiate by due process as prescribed by the Railway Labor Act, or, to be specific, in this case, to extend the coverage of the rules relating to rates of pay to positions which by agreement are not covered by such rules. The position of your Board in such cases has been expressed unequivocally on numerous occasions, as for instance in Award 456, wherein you state:

> "If change in the agreement is desired, that result must be obtained in the prescribed manner and through the proper channels."

The Carrier holds that the words "(authority is co-extensive with the scope of agreements except where otherwise noted)" means exactly what it says. The wording is very plain "co-extensive with the scope of agreements except where otherwise noted." As previously cited, Webster defines "scope" as "range or field taken in, as, the scope of knowledge, scope of a book." Therefore, the awards were to be applied in accordance with the "range or field taken in" by the agreement and the agreement itself, by its own provisions excludes the positions covered by Rules 3(a) and 3(b) from the coverage of the rules governing rates of pay and there was no exception filed by either employes or management which would have changed this condition. To the contrary, no exception was taken, thereby eliminating such positions from the application of the awards since they were not within "the scope of agreements" so far as rates of pay were concerned.

The Carrier therefore holds that it has clearly shown that the employes covered by Rules 3(a) and 3(b), the subject of this controversy, were not within the scope of the Agreement with the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, insofar as rates of pay are concerned; that no exception as provided for in the heading to Exhibits B of the respective awards was inserted by either party which would have brought them within such coverage and that, therefore, they were not covered by the awards, leaving any increase allowed them by the Carrier a purely voluntary one governed solely by the Carrier's sense of equity and that, therefore, the employes claim in this case can be construed only in the light of an attempt to have your Board write into their agreement something they were unable to negotiate and hence must be denied.

Exhibits not reproduced.

OPINION OF BOARD: On April 4, 1946, the Carrier and the Organization entered into an Agreement affecting a wage increase of sixteen cents per hour resulting from an award of an arbitration board. On May 22, 1946, a similar Agreement affecting a further wage increase of two and one-half cents per hour was executed. The wage increases were made "applicable to all Employes parties hereto." The notice served on the Carrier which instigated the wage dispute stated its purpose to be "to change rates of pay as hereinafter stated for all employes we represent." Under Exhibit "B" at-

tached to the Arbitration Agreement which was signed by the Carrier, the following appears:

> "Authority is co-extensive with Scope of Agreements except where otherwise noted."

The Carrier now contends that employes coming within the provisions of Rules 3 (a) and 3 (b), current Agreement, same being employes excepted from rules governing hours of service, rates of pay and discipline, are not within the confronting Agreements providing for the pay increases of sixteen cents and two and one-half cents per hour respectively.

This question has previously been determined by this Division by its Award 3916. We adhere to that portion of that award which holds that the pay increases were applicable to all employes covered by the scope rule of the Agreement. Consequently, it applies to employes within the provisions of Rules 3 (a) and 3 (b).

The Agreement of April 4, 1946 provides that the sixteen cent rate increase shall be made effective as to monthly rated employes in the following manner:

> "(d) Monthly rates—Determine the equivalent hourly rate by dividing the existing monthly rate by the number of hours comprehended by the monthly rate. Sixteen cents (16¢) per hour multiplied by the number of hours comprehended by the monthly rate shall be added to the existing monthly rate."

The Agreement of May 22, 1946, contained a similar provision.

In the present case, the Carrier increased the rates of pay of the occupants of the positions within Rules 3 (a) and 3 (b) by 18½ cents on the basis of 204 hours per month, substantially. The Carrier says this was done as a matter of fairness and not in compliance with the Wage Agreements which it continued to hold inapplicable. The correctness of the increase in view of our holding that the rate increases did apply to positions within Rules 3 (a) and 3 (b) depends upon the meaning of the words "the number of hours comprehended by the monthly rate." Certainly the words do not mean that the hours worked in a month are a fixed number, for if this had been intended, it would have been a very simple matter to have said so. We think the hours comprehended by the monthly rate are to be determined from the available evidence surrounding the position. If the monthly rate is set up by formula, the same formula should be applied in making the wage increase effective. If reports to outside agencies indicate the number of hours used in calculating a monthly salary, it is evidence to be considered. If the Carrier indicates the hours comprehended in paying for a partial month's employment, it is competent evidence of the fact. The number of hours actually worked, in the absence of any other yardstick, may be the controlling factor. We hold, therefore, that the Wage Agreements do not establish the hours of the month to be worked at any precise figure. The comprehended hours of the month are those which were contemplated by the parties in calculating the pay assigned to the position. It is from the evidence and not the Agreements that this must be determined. No attempt has been made to present the evidence as to each employe with Rules 3 (a) and 3 (b). We hold, therefore. that such employes are within the Wage Agreements as claimed and that Sections 1, Article (d) of both Agreements, should be applied in the manner herein set forth.

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 Agreements were violated.

AWARD

Claims sustained to the extent shown by the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 11th day of August, 1948.

Serial No. 80

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Interpretation No. 1 to Award No. 4060

Docket CL-3894

NAME OF ORGANIZATION: Brotherhood of Railway and Steamship Clerks, Freight Handers, Express and Station Employes.

NAME OF CARRIER: Great Northern Railway Company.

Upon application of the Carrier involved in the above award, that this Division interpret the same in the light of the dispute between the parties as to its meaning and application, as provided for in Section 3, First (m), of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

By Award No. 4060, we held that the pay increases involved in the claim applied to all employes within the scope rule of the agreement, including employes within the provisions of Rules 3(a) and 3(b). The question presented by this application for an interpretation is whether the wage increases made on a basis of 204 hours per month constitutes a proper application of the wage agreement, or whether it should have been applied on the basis of 243-1/3 hours per month as contended by the Organization. The dispute involves a question of fact in determining the hours of service comprehended as that term is used in the wage increase agreements.

In keeping its time reports, the Carrier shows each monthly rated employe as working each day of the calendar month. The Carrier concedes that in determining a partial month's pay for an excepted monthly rated employe, it is done upon the basis of the proportion of the days worked to all the calendar days in the particular month. In addition to the foregoing, the Organization asserts and the Carrier does not deny, that the 1947 wage increase agreement was applied by the Carrier to monthly rated positions on the basis of 243-1/3 hours per month. We think these facts establish that the hours comprehended by the monthly rate are 243-1/3.

It is true that Carrier's reports to the Interstate Commerce Commission show the hours comprehended on these positions to be 204 hours per month. But this is not a conclusive fact. They may have been erroneously made, or misunderstood as to the information they were intended to convey. In any event, we think the evidence preponderates in favor of the Organization. A finding that the wage increase agreements should be applied to the positions here involved on the basis of a 243-1/3 hours for each calendar month is in order. The contentions of the Organization are sustained.

Referee Edward F. Carter, who sat with the Division as a Member when Award No. 4060 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 30th day of June, 1949.