

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Dudley E. Whiting, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND
STATION EMPLOYEES**

TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS

STATEMENT OF CLAIM: Claim of the Terminal Board of Adjustment, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees that Management did not properly apply provisions of general wage increase agreements dated Washington, January 17, 1944, Chicago, April 4, 1946, Washington, May 25, 1946, and Chicago, September 3, 1947, by an between the participating carriers, one of which was the Terminal Railroad Association of St. Louis represented by the Carriers' Conference Committees, and its employees represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees to positions of Chief Janitor and Assistant Chief Janitor in St. Louis and did not properly apply provisions of our Agreement with Carrier effective April 1, 1945 in the conversion from monthly to daily rates of pay of these positions, effective December 9, 1947, viz.:

A. (1) That wage increases provided for in Agreement dated Washington, January 17, 1944 be applied to these two positions on the basis of 243-1/3 hours per month as contemplated by Section 1, Paragraph D of the aforesaid Agreement, effective April 10, 1943.

(2) That wage increases provided for in Agreement dated Chicago, April 4, 1946 be applied to these two positions on the basis of 243-1/3 hours per month as contemplated by Section 1, Paragraph D of the aforesaid Agreement, effective January 1, 1946.

(3) That wage increases provided for in the Agreement dated Washington, May 25, 1946 be applied to these two positions on the basis of 243-1/3 hours per month as contemplated by Section 1, Paragraph D of the aforesaid Agreement, effective May 22, 1946.

(4) That wage increases provided for in Agreement dated Chicago, September 3, 1947 be applied to these two positions on the basis of 243-1/3 hours per month as contemplated by Section 1, Paragraph D of the aforesaid Agreement, effective September 1, 1947.

NOTE: It is our understanding that wage increases provided for in the preceeding mentioned Agreements were applied to

these two positions on basis of 204 hours per month, notwithstanding the fact that the monthly rates then being paid these employees contemplated compensation for all services performed.

B. That daily rates of pay for the two positions, when converted from monthly to daily rates by Management, as evidenced by Mr. Hanna's Bulletins Nos. 15 and 16 of December 3, 1947, be fixed at \$12.53 per day for the positions of Chief Janitor and \$11.95 per day for the position of Assistant Chief Janitor in conformity with Rule 45 of our April 1, 1945 Agreement.

C. That occupants of the positions, as reflected by Carrier's payrolls, during the period involved be paid the difference between what they were paid and what they should have been paid, as heretofore set forth, from April 10, 1943 to date the \$12.53 per day rate for the Chief Janitor position and \$11.95 per day rate for the Assistant Chief Janitor positions are established.

STATEMENT OF FACTS:

A. During World War II period the Terminal Railroad Association of St. Louis reconstructed, rearranged and otherwise altered their Union Station facilities in the city of St. Louis to handle the abnormal increased passenger traffic as well as mail and baggage occasioned by the war activities.

B. Certain changes in facilities involved the janitorial force of employees, a group whose wages and working conditions are covered by agreements between the Brotherhood and the Carrier. Agreement dated February 1, 1922. (Subsequently revised effective April 1, 1945).

C. Among other rules of this 1922 Agreement particularly applicable to these employees was Rule 6 covering the establishment of seniority rosters. The Janitor force was, by this agreement, under the jurisdiction of the Station Master.

D. On March 26, 1943, Management (General Superintendent) issued General Notice 56 reading in part as follows:

"On April 1 the responsibility for the work and the services necessary to properly clean the entire Union Station premises, including the business offices, public rooms, midway, station, platforms, and tracks, will be assumed by the Chief Engineer. Present janitor force will be transferred to his department."

Included in this group of employees was one carrying title of Chief Janitor, rate \$6.48 per day, and Storekeeper, rate \$5.81 per day. Both positions were subject to all the rules of our then currently effective Agreement with the Carrier dated February 1, 1922. Preceding the transfer of the janitorial forces from the jurisdiction of the Station Master to the Chief Engineer, the Management requested conference with us for the purpose of discussing the rearrangement in forces and, among other things, proposed a retention of the payroll title of Chief Janitor and changing title of the Storekeeper to Assistant Chief Janitor. The Chief Janitor's duties to consist of general supervision over janitors, janitresses, matrons, elevator operators and toilet attendants on the day shift and the Assistant Chief Janitor with similar duties over the night shift. The Management further proposed establishing monthly rates of pay in lieu of daily rates of pay as compensation for all service performed for each of these two positions. This conference was held with the Management on March 29, 1943 whereat President Watson, now deceased, stated it was the Management's intention to fix a reasonable monthly rate for each of these employees in lieu of the then existing daily rate and that this monthly rate was expected to compensate the employees for all services performed. In other

changed by negotiation to a monthly basis under conditions agreeable to both parties, is no barrier to a resumption of the established rates after the termination of the agreement covering the special arrangement. The present rates are the proper ones for the positions, they having been arrived at by following the provisions of the agreement of January 1, 1920 and adding subsequent increases.

The original daily rates were agreed to by the organization and the carrier. They were later supplanted by monthly rates as a result of a subsequent agreement between the same parties. When that later agreement was dissolved and the positions were returned to their former status of full coverage under the working agreement, the rates of the positions automatically reverted to the previously agreed daily rates in the absence of further negotiation. The present daily rates of the positions are in full accord with all the provisions of the agreement of April 1, 1945 and of all National agreements relating to adjustment in wages to which the carrier and the Clerks' organization have been parties. The Employees' claims are without basis in fact. Any further change in the rates of pay of the positions must be by negotiation and not by interpretation. (Exhibits not reproduced.)

OPINION OF BOARD: We hold that there was agreement by the parties in March and April 1943 to establish jobs of Chief Janitor and Night Chief Janitor as monthly rated jobs. That agreement became a nullity by virtue of Rule 2 of the Agreement effective April 1, 1945 providing:

"These rules shall supersede and be substituted for all agreements, practices and working conditions in conflict herewith."

The conflict with the rules effective April 1, 1945 was due to Rule 45 providing that employes would be paid on a daily basis and establishing a formula for determining the daily rate for monthly rated employes. That rule was not complied with and it was not until November 1947 that such violation caused any complaint. At that time the Organization refused to agree to a continuance of the monthly rate practice and attempted to repudiate any agreement thereto on its part in 1943. The Company abolished the monthly rated jobs and established daily rated jobs by taking the 1943 daily rates and adding all subsequent increases. That method of rate fixing was improper because the prior daily rate jobs were abolished in April 1943 so such rates no longer existed and such method was not in conformity with the Agreement effective April 1, 1945.

In our view the only proper method of converting these monthly rates to daily rates in conformity with the effective Agreement was to use the formula provided in Rule 45 upon the monthly rates effective on April 1, 1945 and adding any subsequent general wage increases to the daily rates so obtained. The reason for such view is that after such date the monthly rates were violative of the agreement and that is the date when the conversion should have been made under such agreement. Whether that would produce the daily rates sought by the claim we have no way of knowing since we do not have the pertinent information. Such daily rates should be made effective December 9, 1947.

That method of conversion would be in conformity with the applicable agreement and would eliminate prospectively the claims of misapplication of certain national wage agreements to these jobs.

In our view the claims for retroactive compensation for misapplication of certain national wage agreements for the period of time in which the employes were compensated by monthly rates are without merit because such situation has ceased to exist, the claims were not made while it existed and such claims must be considered to be barred by long acquiescence.

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

The Carrier violated the Agreement.

AWARD

The claim is sustained in accordance with the Opinion only and is otherwise denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 18th day of October, 1949.