Award Number 4614

Docket Number CL-4620

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 Employes that the Carrier did not properly apply provisions of agreements dated Chicago, April 4, 1946 and Washington, May 25, 1946, by and between the participating carriers, one of which was the Terminal Railroad Association of St. Louis represented by the Carriers' Conference Committees, and its employes represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes:

1. When it failed and refused to increase the rates of pay of certain monthly rated employes by multiplying the hourly increase provided therein by 243-1/3, the number of hours comprehended by the employes' monthly rate, in conformity with the terms and conditions of said wage agreement

2. That the carrier now be required to properly apply the provisions of these agreements, namely, Section 1, paragraph (d) thereof as of the effective dates of each agreement, namely, January 1 and May 22, 1946 to the employes whose rates of pay have heretofore not been increased in conformity therewith.

EMPLOYES' STATEMENT OF FACT: A. On October 1, 1945, formal notice was served upon the Terminal Management, in accordance with provisions of Section 6 of the Railway Labor Act, as amended, of the Employes' desire to change the rates of pay, effective November 1, 1945, for all employes that the Brotherhood represented on that property as set forth in Rule 1 of Agreement effective April 1, 1945. (Employes' Exhibit No. 1.) Conferences upon the Employes' request was held with Management October 29, 1945. October 30, 1945, Management declined our request for general wage increase. (Employes' Exhibit 2.) On November 14, Management advised us that the Carrier was authorizing the Western Carriers' Conference Committee to represent the Terminal Railroad Association of St. Louis in handling negoti-

Employees based on he recollections of the writer, but was subsequently checked and found to be correct as reported to Assistant to President Coad in communication of January 25, 1949, Exhibit 4. That check entirely collapses the position of the organization which is simply that monthly rated employees should be allowed the increases covered by the National agreements on basis of the number of hours constituting the work month, and even if it is concluded that the Clerks' organization has the right of contractual representation of our excepted forces in wage matters and that we did not properly exclude those forces when we authorized the National Committees to represent us, no claim can be made that we owe the occupants of these positions in excess of what has already been allowed them. In other words, the whole claim of the organization, using their own language, is that we "failed and refused to increase the rates of pay * * * by multiplying the hourly increase * * * by the number of hours comprehended by the employes' monthly rate." Of course, they claim that their monthly hours of assignment are 243-1/3 but that is entirely disproved by the payroll check which we made showing that our excepted forces are allowed punitive overtime pay for all services rendered in excess of 204 hours per month. Inasmuch as the employees were additionally compensated for hours in excess of 204, then such excess hours were not comprehended in the monthly rate of pay and the application of the wage increases on basis of 204 hours per month was right and proper. (Exhibits not reproduced.)

OPINION OF BOARD: The claim in this case involves the proper application of the provisions of the wage agreements of April 4, 1946 and May 25, 1946 to monthly rates on the basis of the hours comprehended by such rates. Similar issues have been decided by this Board in our Awards Nos. 3916, 4060 and Interpretation No. 1 thereto, 4087 and 4429. Two issues are presented here, to-wit, whether such wage agreements are applicable to so-called excepted employes not subject to all rules of the Clerks' Agreement with the Carrier, and the number of hours comprehended by the monthly rates if such wage agreements are applicable. Both issues have been considered in our prior awards.

Both wage agreements bear exhibit attachments showing the Organizations and the Carriers represented and governed by the actions of the Conference Committee. Those exhibits state that "authority is co-extensive with scope of agreements except where otherwise noted." The exceptions are shown in the exhibit where applicable by number. Exception No. 1 is, "does not include so-called excepted clerical employees not subject to all rules of Clerks' Agreement." Such exception is not noted as applicable to this Carrier.

In the Agreement between these parties effective April 1, 1945 the so-called excepted employes are shown as subject only to certain rules, one of which is Rule 1, the scope rule. In our view, these facts conclusively show that the wage agreements involved are applicable to the so-called excepted employes in this case. The Carrier relied on a claimed oral agreement during negotiations leading to the Agreement effective April 1, 1945. Any such oral agreements are considered as merged into the written agreement and may not be shown to modify the writing.

In accordance with our prior awards, mentioned above, the determination of the number of hours comprehended by a monthly rate is a question of fact to be decided from the available evidence. The facts here shown are (1) the positions are reported to the Interstate Commerce Commission as being paid on a calendar day basis, (2) the calendar day basis is used to compute the pay of an employee upon separation from service, (3) Carrier's Exhibit 6 attached to its reply to the employes' submission shows the number of hours per month used in determining overtime payments from 1940 to 1948 (most are 204 hours, some 218, 224, 240, 243-1/3, 248 and for some no figure is given and no overtime was paid), and (4) the wage agreement of September 3, 1947 and certain wage agreements antedating April 1, 1945 were applied on a basis of 243-1/3 hours as comprehended by all the positions involved.

The report to the ICC has no effect upon the pay of employes or their hours of work and is not conclusive evidence. See our Interpretation No. 1 to Award No. 4060, Serial No. 80. The Carrier admits they were erroneously made. The use of the calendar day basis to compute pay upon separation from service occurs infrequently.

The Carrier asserts that since 1940 it has paid overtime for work in excess of 204 hours per month and submitted a statement showing the amount paid as such and the number of hours per month used in computing it (Exhibit 6 referred to above). Such evidence was not submitted to this Board in any of our previous awards upon this subject. We think the number of hours of work per month after which additional payment for services is made is pertinent evidence of the hours comprehended by a monthly rate.

The fact that wage increases for these positions were computed in a certain manner prior to April 1, 1945 is of no consequence since before that date they were not within the scope of the agreement between the parties and the wage agreements were inapplicable to them. The application of the wage agreement of September 3, 1947 is evidence to be considered but is not conclusive. We are here concerned with the application of the 1946 wage agreements which must be on a basis of the hours comprehended by the monthly rate and we think the best evidence thereof adduced in this case is the hours of service per month after which additional pay is received for additional service.

Accordingly we hold that the hours comprehended by these positions in the application of the wage agreements of April 4, 1946 and May 25, 1946 shall be the hours shown for the position by Exhibit 6 referred to above. For those positions where such hours are not shown by that exhibit, the hours comprehended shall be considered to be 243-1/3 per month in conformity with the other evidence thereon. In cases where wage adjustments are due hereby, they shall be retroactive to the effective dates of such wage agreements, namely January 1 and May 22, 1946, as provided in such agreements.

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 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

The Carrier violated the wage agreements.

AWARD

The claim is sustained only to the extent stated in the Opinion and is otherwise denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 20th day of October, 1949.