Award No. 4989
Docket No. CL-4829

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

CLINCHFIELD RAILROAD COMPANY

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

(1) The Carrier violated the Wage Agreement of 1941, and subsequent Wage Agreements of April 4, 1946, and May 27, 1946, by increasing the cost of rental to its employes living in houses owned by the Carrier.

(2) That W. T. Wohlford, Jr., and F. J. Cochran, employes living in company owned houses at Dante, Virginia, and all other employes occupying positions embraced within the Scope Rule of our working conditions agreement and living in company owned houses be reimbursed for amounts collected by Carrier in excess of the fixed rentals in effect as of August 31, 1941.

EMPLOYES' STATEMENT OF FACTS: Messrs. Wohlford and Cochran, as well as other employes of the Carrier coming under the scope of the agreement between the Brotherhood and Carrier effective February 1, 1936, live in company owned houses. The rental charges for which made by Carrier are deducted from the Employes' pay monthly by payroll deductions.

The rental charge made by Carrier to the employes was unilaterally advanced commencing March 1, 1942 above the rate in effect as of August 31, 1941 and a further increase in rental charge was unilaterally made by the Carrier commencing February 1, 1947. The rental rates established by Carrier in February 1947 continued in effect until December 1948 when, in the Carrier's application of N.R.A.B. Award 4141 the rentals were reduced to the rate in effect as of August 31, 1941.

Request that this overcharge in rental cost be refunded, was made January 31, 1949, by the Employes' Representative to the General Manager Mr. C. D. Moss, this request was declined in conference, same date.

Formal request for the overcharge in rental cost to be refunded, was made to General Manager Moss in letter dated June 15, 1949. (Employes' Exhibit 1)

On June 21, 1949 Mr. Moss denied our request. (Employes' Exhibit 2)

POSITION OF EMPLOYES: This dispute involces the application of the 1941 and subsequent wage agreements made between the Clinchfield Railroad

OPINION OF BOARD: Claimants reside in houses owned by the Carrier. Increases in the rent were made over the amount fixed as of August 31, 1941, as follows: As to Claimant Wohlford, the rent was increased from $13.00 to $15.00 per month on March 1, 1942. On November 1, 1946, it was increased to $17.50. As to Claimant Cochran, the rent has been $17.50 per month since he first occupied the house on April 8, 1947. He claims that the rent should have been only $10.00 per month for the reason that increases made after August 31, 1941, were improperly made.

The theory advanced by the Organization grows out of the provisions and applications of the Fair Labor Standards Act of 1938 which provided that, in determining whether a carrier was paying the minimum wage to its employes, the wage could be considered as including "the reasonable cost, as determined by the administrator, to the employer of furnishing such employe with board, lodging, or other facilities, if such board, lodging, or other facilities are customarily furnished by such employer to his employes." It is also pointed out that subsequent wage agreements provided that in making increases in wages effective, the Carrier could continue to make deductions from such increased wages to the extent that such deductions were made on August 31, 1941.

It is clear to us that the deductions referred to are those growing out of the collective agreement. If the agreement requires the Carrier to provide board, housing, or other facilities, they are within the purview of the Fair Labor Standards Act. Similarly, in the wage increase agreements, the provision limiting the deductions to be made to those in effect and in the amount fixed on August 31, 1941, was for the purpose of prohibiting the Carrier from offsetting the granted increase by increasing the amounts of deductible items which were proper to be credited as a part of the employes' compensation.

The Claimants in the present case were a weighmaster and a clerk. We find nothing in the Agreement by which the Carrier is required to furnish housing to these employes or, if it does rent housing facilities, that it is to be treated in any manner as a part of the compensation to be paid for the services of these employes. Under such circumstances, the rental of the houses is an independent agreement not subject to the Fair Labor Standards Act, the Clerks' Agreement, or any of the subsequently negotiated wage agreements. The record shows that the Carrier rents some houses to persons not within its employ at all. When the Carrier has not contractually obligated itself to provide housing as a part of the compensation to be paid an employe, it can properly contract independently with an employe for the lease of a house the same as with a person who is not an employe at all.

The Organization relies upon Award 4141 of this Division to sustain its position. The dispute disposed of in that award dealt with the Maintenance of Way Agreement which contained a provision that "So far as is practicable, comfortable houses will be furnished Section Foremen." No such provision appears in the Clerks' Agreement. Award 4141 is readily distinguishable on the facts.

We are required to say that Claimants have not pointed out any provision of any controlling agreement which ties the rental of the houses in question into the employer-employe relationship. The fact that the Carrier insured the collection of the rent by deducting it from the employes' pay, under the circumstances shown, is not a controlling factor. Consequently, they have no basis for a sustaining award.

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 there is no violation of the Agreement shown.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 4th day of August, 1950.