Award No. 5212
Docket No. MW-5177

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Hubert Wyckoff, Referee.

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

NEW YORK, ONTARIO AND WESTERN RAILWAY

(Raymond L. Gebhardt and Ferdinand J. Sieghardt, Trustees)

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

(1) That the Carrier improperly laid off its monthly-rated Maintenance of Way Employes on April 18, 1949, and subsequent days thereto;

(2) That the monthly-rated employes who were adversely affected by this improper action be paid the difference between what they did receive and what they should have received at their established monthly rate of pay during the time they were held out of service.

EMPLOYES' STATEMENT OF FACTS: Effective April 18, 1949, monthly-rated employes in the Maintenance of Way Department were furloughed, account of a strike of other classes of Railroad employes.

The employes assigned to the following monthly-rated positions were affected by this lay-off:

Carpenter Foremen
Painter Foremen
Locomotive Crane Engineers
Ditcher Engineers
Locomotive Crane Firemen
Ditcher Firemen
Section Foremen

On May 3, 1949, the employes were returned to service.

During the period of time the above listed monthly-rated positions were discontinued, the employes affected received no compensation.

Claim for the wage loss suffered by the employes assigned to the positions was filed with the Carrier and claim was declined.

The agreement in effect between the two parties to this dispute, dated December 1, 1940, and subsequent amendments and interpretations are by reference made a part of this Statement of Facts.

POSITION OF EMPLOYES: Article 5, Section 22 of the agreement, reads as follows:

OPINION OF BOARD: These are claims by monthly-rated employes for their full monthly rates of pay for each of two months, without reduction for the parts of each of those months not worked by direction of the Carrier because of a strike.

The only provisions of the Agreement relied upon by the Claimants are Sections 20 and 22 of Article 5, which reads as follows:

Article 5, Section 22:

"Supervisory employes. Employes whose responsibilities and/or supervisory duties require service in excess of the working hours or days assigned for the general force will be compensated on a monthly rate to cover all services rendered, except that when such employes are required to perform work which is not a part of their responsibilities or supervisory duties, on Sundays or in excess of the established working hours, such work will be paid for on the basis provided in these rules, in addition to the monthly rate. Section foremen required to walk or patrol track on Sundays shall be paid therefor on the basis provided in these rules, in addition to the monthly rate."

Article 5, Section 20:

"To compute the hourly rate of monthly-rated employes, divide the monthly salary by 204. In determining the hourly rate, fractions less than one-half (½) of one cent (1¢) shall be dropped; one-half cent (½¢) or over to be counted as one cent (1¢)."

All employes under the Scope of the Agreement, including the Claimants, were laid off from April 18, 1949, to May 3, 1949, during a strike of other classes of Railroad employes. The Claimants consist of Section Foremen and six classes of Bridge and Building employes, all of whom were monthly rated. It is said by the Carrier, and technically not denied by the Claimants, that the changes called for by the 40-hour week were applied to an established arrangement, whereby the monthly rate of the Bridge and Building employes was based on 255 hours per month, without any additional payment under the overtime, call, and similar rules of the Agreement, whereas the monthly rate of the Section Foremen was based on 204 hours, with additional payment under the overtime, call, and similar rules of the Agreement. The Carrier discloses these facts in its submission and states that it has made an offer of compromise, based on this distinction. On well-settled principles (Awards Nos. 1395, 2283, 2863 and 3345), we disregard the disclosure.

First. In view of Awards Nos. 3838, 4001, 4849 and 5042, all of these positions could have been abolished with reduction in the monthly rates for time not worked thereafter, if the Carrier had manifested an intention to abolish the positions. But this the Carrier did not do.

The record does not disclose any formal notice abolishing the positions; the most that appears is a statement by the Carrier that "all employes were notified that their services would not be required". This is no more than a suspension of the employes (Awards 3680 and 3715) and the fact that, when the strike was concluded, the Carrier did not bulletin the positions as required by Article 3, Sections 6 and 7, confirms the conclusion that there was no intention to abolish the positions (Awards 4170 and 4821).

It follows that the positions continued to exist during the strike.

Second. Since the positions were not abolished, the question is, whether the Agreement was violated by the reductions in the monthly rates of pay on account of the lay-offs during the strike.

With an exception not material here, Section 22 of Article 5 puts all of these employes on a monthly rate, to cover all services rendered, the expressed supposition being that these services include responsibilities or duties which are paid for by the monthly rate, although they may require service in excess of the working hours or days assigned for the general force.

The responsibilities or supervisory duties with which these monthly-rated employes are charged, unlike the duties of daily-rated employes, are fluctuating in volume and geared to the continuous operation of the Carrier. The monthly basis of the hiring and the nature of the responsibilities assumed, necessarily imply a continuing obligation on the part of the employe, among other things, to be ready for service throughout the month, whereas the daily-rated employe's responsibility normally ceases with the conclusion of his daily assignment.

Since the Carrier did not abolish these monthly-rated positions, the Claimants were simply suspended incumbent employes held in readiness, subject to call, to return to their positions (Award 3680). It follows that the Carrier violated the Agreement by making these reductions in their monthly rates of pay (Awards 320, 759, 805, 1010, 1131; and compare 3680, 3715 and 4170).

Awards 4065, 4849, 5052, 5074, 5134 and Serial No. 92 (Interpretation No. 1 to Award No. 4481) are not contrary to the conclusion reached here. In Awards 4065, 4849, 5052, 5074 and 5134, the positions were, in fact, abolished; and in Serial No. 92, the duties and responsibilities of the employes involved and other terms of their employment were not comparable to those of the employes involved here.

Third. If some of these Claimants have been compensated at variance with the terms of the Agreement, we have not taken this fact into consideration, for it has been urged here more as a disclosure of an offer of compromise then as an argument addressed to a claimed violation of the Agreement. Article 5, Section 22, makes no distincton among the various classes of supervisory employes covered.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute notice of hearing thereon, and upon the whole record of 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 Agreement has been violated.

AWARD

Claims sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 7th day of February, 1951.