# Award No. 5905
# Docket No. CL-5860

## NATIONAL RAILROAD ADJUSTMENT BOARD
## THIRD DIVISION

**Carroll R. Daugherty, Referee**

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## 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 Agreement dated March 1, 1951, effective February 1, 1951:

1. When they refused and continued to refuse to apply Article I, Section (d) of the Agreement, and;

2. That the Carrier now be required to properly apply this Agreement as of the effective date of February 1, 1951, and add to the wages in effect on that date the sum of twelve and one-half cents (12½c) per hour.

**EMPLOYES' STATEMENT OF FACTS:** On October 25, 1950, the Employes served formal notice on the Carrier in accordance with the provisions of Section 6 of the Railway Labor Act as amended, reading in part as follows:

"Please accept this as formal notice, served in accordance with the procedures of the Railway Labor Act on behalf of all employes we represent, of our desire to change and increase all existing rates of pay by the addition thereto of twenty-five (25) cents per hour, effective November 25, 1950, this increase to be applied to all types of rates so as to give effect to the requested increase of twenty-five (25) cents per hour."

The first conference in connection with this notice was held between the Employes and the Carrier at 10:00 A. M., on Tuesday, November 21, 1950, as set by Mr. M. C. Anderson's letter of November 2, 1950, reading as follows:

"St. Paul 1, Minn.
November 2, 1950

"Mr. F. A. Emme, General Chairman
Brotherhood of Railway and Steamship Clerks
305 First Federal Building
St. Paul 1, Minnesota

Dear Sir:

This will acknowledge receipt of yours of October 25, 1950, serving formal notice in accordance with the Railway Labor Act on

Very different indeed from the language of the provision of the 1946 agreement covering its application and very deliberately so on the part of the Carriers' Conference Committee which negotiated it for the Carriers, the members of which had in mind the difficulties of this Carrier and others due to the construction placed by your Board upon the applicability provisions of the 1946 agreement.

Here is no mention of **"Scope"** or **"Scope Rule."** To the contrary, the application of this 1951 wage increase is thrown back upon the provisions of "the wage or working conditions agreement in effect between each carrier and each labor organization of employes."

Under the agreement between this Carrier and the Brotherhood of Railway and Steamship Clerks, positions and employes specified in Rule 3(a) are definitely eliminated from the coverage of Article VI covering "Rating Positions," hence taking them out from the application of the March 1, 1951, wage agreement, or from any agreement relating to rates of pay unless such agreement specifically provides otherwise. No such provision is made in the March 1, 1951, agreement; no mention is made therein of **"Scope"** or **"Scope Rule,"** the inclusion of which wording in the applicability provisions of the 1946 agreement led your Board to hold in Award 4060 on this Carrier substantially that inasmuch as employes and positions covered by Rule 3(a) were subject to the Scope rule, they fell within the application of the 1946 wage agreement.

To the contrary, and in line with the wishes of the Carriers they represented, the Carriers' Conference Committee which negotiated the March 1, 1951 agreement declined to use the language of the 1946 agreement but instead agreed to the wording of Paragraph (i) heretofore quoted, which in their opinion restricted the application of the March 1, 1951 agreement to positions and employes who fell within the rating provisions of the agreements in effect on the individual railroads and since employes and positions covered by Rule 3(a) of the agreement in effect on this Carrier are not covered by "Article VI—Rating Positions" it must follow that the wage increases provided in the March 1, 1951 agreement are not applicable to such positions and employes.

We hold, therefore, that the claim of the Employes in this case is without merit and that a denial thereof by your Board should follow.

It is hereby affirmed that all data herein submitted in support of Carrier's position has been submitted in substance to the Employe Representatives and made a part of the claim.

(Exhibits not reproduced.)

**OPINION OF BOARD:** The Parties agree that the Carrier did not apply Article 1, Section (d) of the Wage Agreement of March 1, 1951, to employes comprehended by Rule 3(a) of the Scope Article in the Parties' Schedule Agreement of September 1, 1950.

The Organization contends that the Carrier thereby violated that part of the Wage Agreement in respect to those employes, asserting that they are within the scope of any agreement on wage rate changes negotiatd between the Parties and relying in large part on our Award 4060 in a similar case.

The Carrier takes an opposite view. (1) It contends that Rule 3(a) of the Schedule Agreement exempts all such employes from the application of any rate-of-pay provisions in that Agreement; and thereby it exempts the employes from the application of any agreement dealing with general increases in rates of pay. (2) Award 4060 is not controlling here because it applied to a different collective bargaining authorization made by the Carrier to the Western Carriers' Conference Committee in respect to the

negotiation of wage agreements effective before 1947. (3) In support of thse contentions the Carrier argues that the language both of Section (i) of the 1951 wage agreement and of the Carrier's authorization to the Western Carriers' Conference Committee for negotiation of the 1951 Wage Agreement was drawn so as to exempt these employes from that Agreement.

The first clause of the first sentence in Section (i) of the 1951 Wage Agreement is the relevant one. It reads as follows:

> "The increase in wages provided for in this Article I shall be computed in accordance with the wage or working conditions agreement in effect between each carrier and each labor organization of employes, . . . "

The Carrier contends that "the increase in wages" cannot be "computed in accordance with the . . . working conditions agreement" in effect here, because the employes involved in the instant dispute are exempted by Rule 3(a) of the Scope Article of such agreement from such agreement's relevant computation provisions.

The language of the 1951 authorization reads as follows:

> "Authorization is co-extensive with the provisions of current schedule agreements applicable to the employes represented by the organizations listed above."

This authorization is the same as those made for the wage agreement effective September 1, 1947, and for the wage-hour agreement effective September 1, 1949. For wage agreements effective in 1946 and earlier, the authorizations read as follows:

> "Authority is co-extensive with scope of agreements except where otherwise noted."

The language of Section (i) of the 1951 wage agreement is the same as that in similar sections of previous wage agreements .

The Organization contends that the change in the language of the authorization has no relevance, and it was so understood when the recent wage agreements were negotiated and signed. The employes involved in the instant case are and have been represented and bargained for by the Organization. It has been so certified under the Railway Labor Act. True, the Organization has agreed to exempt them from certain provisions of the Rules or Schedule Agreement, including those dealing with rates of pay. But, except for its general Scope Rule, the Schedule Agreement has no bearing on the instant issue. The Wage Agreement is the relevant one, and it is separate from the Schedule Agreement. When the recent authorizations of the Carrier to the Conference Committees mention "current schedule agreements", they embrace all employes covered in the Scope Rule. These employes are covered. The fact that the Organization agreed to exempt them from certain rules, including rate-of-pay rules, is immaterial. The rate-of-pay rules in the Schedule Agreement have nothing to do with general wage rate increases but are confined to such matters as rate-of-pay changes for particular positions when job content is changed. Thus, the "scope of agreement" mentioned in the earlier authorizations and "the provisions of current schedule agreements" mentioned in the later ones must be construed to have identical meanings. Furthermore, the Carrier must have recognized this in 1947 and 1949 for the authorizations were the same then as in 1951; yet it applied the wage and hour agreements effective in those years, as the Organization contends it should have done for the 1951 Wage Agreement. This position is fortified by the fact that Section (i) in the 1947 and 1949 agreements was the same as in the 1951 Agreement, as well as in pre-1947 ones. Finally, the only em-

ployes which the Parties mutually agreed to except from the Wage Agreement were those specifically exempted, namely, certain classes employed at the King Street Station.

Clearly our task in this case is, in the light of all these circumstances, to interpret the Carrier's authorization of 1951 and Section (i) of Article 1 of the 1951 Wage Agreement. From our study of the record we think we must rule that the position of the Carrier is not tenable. The Organization has been certified under the Railway Labor Act to represent the employes here in question in collective bargaining with the Carrier on wage rates, hours of service, and working conditions. The Organization agreed to relinquish some of its jurisdiction over these employes in respect to the latter two items, including rates of pay for particular jobs. But it never agreed to give up any of its control over them in respect to general wage rate changes. There is no compelling evidence to this effect. To us it appears that the intent of Article I(i) of the 1951 Wage Agreement is to indicate how the wage rate increases are to be calculated and applied to various groups of employes; it does not seem reasonable to believe that it was drawn as a subtle way of providing exemptions for certain classes. It appears further that, whatever the carriers may have had in mind in 1951, the authorizations of the carriers to their Conference Committee had the same meaning to the organizations as those used before 1947; and, in the light of the reasoning set forth above, they have such meaning to this Board.

The instant case, then, is one involving the proper application of a general wage rate change to the contested employes. We think they are subject to the provisions of the 1951 Wage Agreement, to which the Carrier and the Organization were parties.

The Organization contends that the Carrier has failed to apply Article I, Section (d) of the 1951 Wage Agreement to the employes involved in this case. This paragraph reads:

"(d) **Monthly Rates—**

> Determine the equivalent hourly rate by dividing the existing monthly rate by the number of hours comprehended by the monthly rate. 12½ cents per hour multiplied by the number of hours comprehended by the monthly rate shall be added to the existing monthly rate."

There is little direct evidence in the record in respect to the extent to which the Carrier failed to apply the above-stated provisions. That is, we are unable to say to precisely what extent Article I, Section (d), was violated. We content ourselves now, therefore, with directing the Carrier to apply the provisions of this paragraph to whatever extent it has thus far failed to apply them.

**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 Carrier must apply the provisions of Article I, Section (d), of the 1951 Wage Agreement to all its employes represented by the Organization in collective bargaining for general wage rate changes, and specifically to the employes at issue in the case.

AWARD

Claim (1 and 2) sustained to the extent set forth in Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 7th day of August, 1952.