Award No. 5906
Docket No. CL-5893

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Carroll R. Daugherty, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES

STOCK YARDS DISTRICT AGENCY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes that:

a. The Stock Yards District Agency (hereinafter referred to as the Carrier) failed to apply certain provisions of the National Wage Increase Agreement, dated Washington, January 17, 1944, and subsequent National Wage Increase Agreements, dated Chicago, April 4, 1946; Washington, D. C., May 25, 1946; Chicago, Ill., September 3, 1947; Chicago, Ill., March 19, 1949; and Washington, D. C., March 1, 1951, to employes of the Carrier occupying clerical positions paid on a piece-work rate basis.

b. Carrier shall now be required by an appropriate order and award to properly apply provisions of the National Wage Increase Agreements set forth in Section a. hereof to the involved employes.

EMPLOYES' STATEMENT OF FACTS: (a) February 25, 1942, Agreement was negotiated by the Brotherhood with the Carrier embodying rules governing the hours of service and working conditions of employes of the Carrier as set forth in the scope rule No. 1 thereof. Copy of this Agreement has heretofore been furnished the Board and by this reference thereto is made a part hereof.

(b) On September 25, 1942, formal notice was served on Management for an increase in rates of pay for all employes of the Carrier represented by the Brotherhood to become effective October 25, 1942. Employes' Exhibit No. 1. Our request was not composed in conference with Management, and on November 12, 1942, Carrier's representative, Mr. E. L. Kemp, General Agent, advised that the Carrier would abide by an understanding and/or agreement reached in concerted handling of the Employes' request by its (Carrier's) National Conference Committees. Employes' Exhibit No. 2(a). This was later supplemented by Formal Memo Agreement dated Chicago, March 17, 1944. Employes' Exhibit No. 2(b).

January 17, 1944, Agreement was consummated by the respective representatives of the Carriers (Carriers' Conference Committee) and the representatives of the participating Labor Organizations involved providing

"Referring to your letter of December 16, 1950, advising that you propose to take dispute alleging improper application of the seven cents an hour increase effective October 1, 1948, to the Third Division of the National Railroad Adjustment Board.

You were advised at various conferences (the last one being October 5, 1950) that the general wage increases provided for in the Chicago, March 19, 1949, agreement, were made in exactly the same manner as all prior general wage increases since March 16, 1942, the effective date of the existing agreement. Our position is that no dispute exists, therefore, there is nothing to refer to the National Railroad Adjustment Board.

Piece workers were compensated on a dual basis when the existing agreement was consummated (i.e., hourly rate and piece work unit rate) and all subsequent general wage increases were applied in the same manner to the hourly rate excepting the adjustment made to establish the 40-hour work week effective September 1, 1949. In addition to this, rates for piece workers, et al., were considered by the National Mediation Board in Case A-1925 and mutually disposed of in full settlement and satisfaction of all questions submitted by agreement between the parties under date of March 15, 1946, with no change in the piece workers' dual basis of pay."

Please be advised that we are submitting this dispute to the Third Division, National Railroad Adjustment Board ex-parte.

C. E. Kief, General Chairman

The above records which are incontrovertible show that when the agreement between the Agency and the Brotherhood was executed effective March 16, 1942, the employes then on piece work assignments were compensated on a dual pay basis, i.e., they were being compensated at the piece work rate for work performed, plus fifteen cents (15c) per hour for each hour actually worked, and as specifically provided for in paragraph (a) of Rule 43 reading:

"The present basis of pay will be continued."

Under these circumstances, Item (a) of claim providing:

"The Stock Yards District Agency (hereinafter referred to as the Carrier) failed to apply certain provisions of the National Wage Increase Agreement, dated Washington, January 17, 1944, and subsequent National Wage Increase Agreements, dated Chicago, April 4, 1946; Washington, D. C., May 25, 1946; Chicago, Illinois, September 3, 1947; Chicago, Illinois, March 19, 1949; and Washington, D. C., March 1, 1951, to employes of the Carrier occupying clerical positions paid on a piece-work rate basis",

is incorrect and a nullity, since all wage increases stipulated in the aforementioned claim have been made in conformity with the Agreement between the parties effective March 16, 1942.

All data herein has been submitted to the Brotherhood in conference or in correspondence.

(Exhibits not reproduced.)

OPINION OF BOARD: The facts material to a determination of this dispute appear to be as follows:

(1) In the "Agreement Governing Hours of Service and Working Conditions" between the parties to this dispute, Rule 43 (a) reads:

"The present bases of pay will be continued."

(2) In each of the National Wage Agreements stated in the instant claim, to which the Carrier and the Organization became parties, the application of the agreed-on wage rate increases to piece rates was dealt with in a subsection (e), which reads:

"Adjustment of piece-work rates of pay shall be based on the amount of increase applicable to the basic hourly rate for the class of work performed. Where piece-work rates of pay are in effect on carriers having special rules as to the application of any increase, or decrease, in such rates, such rules shall apply. In the absence of any definite rule governing, the equivalent of . . . cents per hour shall be added to the unit piece-work price."

(3) In accordance with its practice in applying hourly wage rate increases to clerical piece workers during years (e.g., 1937) before its first agreement with the Organization (1942), the Carrier maintained existing piece rates during the years of the above-mentioned national agreements and applied the rate increases of those agreements to piece workers by multiplying their hours-worked by the amounts of the increases and adding the results to their piece-work earnings.

(4) The issue before this Board has been the subject of unsuccessful negotiation between the parties since 1944.

(5) During that period the Carrier made at least three proposals for adjustment of the dispute.

(a) In 1944 it proposed to raise existing piece rates by a percentage obtained as follows: divide the straight-time piece-work earnings for a stated period into the amounts of additional pay provided by multiplying the straight-time hours worked during the period by the hourly wage rate increases stated in the wage agreement(s).

(b) In 1949 it proposed to increase existing piece rates by an amount obtained as follows: multiply piece rate men's hours worked during a given period by the amount of hourly increase provided in the wage agreement(s). Divide this result by the number of "pieces produced". Then add this result to the existing piece rate.

(c) After the Organization had proposed to apply the hourly increases of the agreements to piece workers by raising the daily basic minimum pay of such workers, the Carrier countered by offering to establish hourly minimum rates.

(6) During the period, the Organization declined the Carrier's offers, contending that if the piece rates were increased as proposed by the Carrier, earnings would be lower than those afforded under the existing system (see (3) above). The Organization counter-offered a minimum daily rate guarantee for such workers, as indicated above.

(7) The issue now before this Board was one of those before an Emergency Board in 1949. That Board declined to pass on the

dispute, disclaiming jurisdiction, and remanded it to the parties for bargaining.

The Carrier challenges the jurisdiction of this Board in respect to the claim arising out of this eight-year old dispute. It contends that under the Railway Labor Act—Section 3, First (i)—this Board is limited to settling grievances and interpretative disputes arising out of and/or under existing collective bargaining agreements; whereas the instant dispute involves proposed changes in rates of pay and accordingly is concerned with what amounts to a proposed new agreement. As such, the dispute is asserted to be subject to the provisions of Section 5, First, of the Act.

On the merits of the instant claim, the Carrier contends, Rule 43 (a), quoted above, establishes that the Organization has agreed since 1942 to accept the methods used by the Carrier in applying hourly increases to piece workers.

The Organization strongly denies any such acquiescence. It contends that the word "bases" refers not to methods of applying hourly increases but to systems of wage payment, e.g., hourly rate vs. piece rate.

The Organization also contends that the dispute is properly before this Board.

Our first concern, then, is with the question of jurisdiction. On this we think the answer is clear: The dispute is properly before us, at least in part. It involves, in part, a matter of interpreting a series of wage agreements to which the Carrier and the Organization were and are parties. Section 3, First (i) of the Railway Labor Act, as amended, empowers the National Railroad Adjustment Board to finally determine disputes over the interpretation of existing agreements. The several sub-sections (e), quoted above, are parts of such agreements. Therefore we conclude we hold jurisdiction on at least this question: Has the Carrier properly applied to the eight piece workers involved in this case the provisions of sub-section(s). (e) of the national wage agreements listed in the claim?

On this question, we think the record compels the answer "no". The Agreement between the parties contains no special rules governing the application of hourly rate increases or decreases to piece-work rates. Therefore the last sentence of sub-section(s) (e) is controlling. It requires that the "equivalent" (i.e., not necessarily the actual amount) of an hourly rate increase must be added to the piece-work rate per unit of output for a given class of work. We do not think that the method used by the Carrier over some fifteen years fulfills this requirement. No amounts were added to existing piece rates as such. The employes were given the increases just the same as if they had been hourly rate men. Their piece rates remained unadjusted.

We do not think that Rule 43 (a) of the parties' Rules Agreement discloses acquiescence by the Organization in the method used by the Carrier to apply hourly rate increases to piece workers. The word "bases" is decidedly ambiguous. But the record fails to establish that both parties meant to abide by the methods previously used by the Carrier in applying such increases.

Our negative ruling here of course throws no light on the question of what, under the wage agreements, is the proper method of applying hourly rate increases to these piece workers. On this matter we believe our jurisdiction is restricted to the suggestion of a general governing principle that will give effect to the requirement of sub-section(s) (e). And we believe that the parties should, on the basis of this principle, negotiate their differences to a successful conclusion without further recourse to third parties or outside agencies.

The principle is this: In respect to the hourly rate increase established in a given wage agreement, raise a given position's and/or employe's piece rate by an amount which, for the position's and/or employe's average level of output during an appropriate period, will produce for such period earnings that are as high as but no higher than the total earnings, piece rate and hourly, which are afforded for such period by the method thus far used by the Carrier.

We are of the opinion that good-faith negotiation by the parties on the basis of this principle wil produce agreement and finally settle the controversy.

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 thus far failed to comply with the relevant provisions of the national wage agreements, 1944-1951.

AWARD

Claim sustained to 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.

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Interpretation No. 1 to Award No. 5906

Docket No. CL-5893

NAME OF ORGANIZATION: Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes.

NAME OF CARRIER: Stock Yards District Agency.

Upon application of the representatives of the employes involved in the above Award, that this Division interpret the same in the light of the dispute between the parties as to its meaning and application, as provided for in Section 3, First (m) of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

The words of Award 5906, rendered by the Third Division of the National Railroad Adjustment Board on August 7, 1952 were as follows:

Claim sustained to extent set forth in Opinion and Findings.

In respect to the Findings, one paragraph stated that the Carrier had thus far failed to comply with relevant provisions of the national wage agreement, 1944-1951.

In respect to the Opinion, the last paragraphs thereof suggested that the Parties negotiate their differences (as to how the wage agreements should be applied to piece rates of pay) in accordance with a general principle that contained, in substance, two elements:

1. The piece rates themselves, during the years involved, should have been changed. (The Carrier had not changed them but had given the affected employes the wage increases merely in the form of cents-per-hour additions to their earnings at the old piece rates.)

2. The piece rates should now be changed in such a way that the earnings for hours worked during any given pay period for the affected years should be no higher and no lower than the earnings provided under the method used by the Carrier.

This suggestion, as the key portion of the Opinion, is part of the Award, for the Opinion is brought into the statement of the Award.

Implicit in the second element of the suggested principle are at least four items: (a) The Division does not presume to tell the Parties the precise arithmetical or other methods to be used to change the piece rates. Only the end result is specified, namely no change in the affected employes' earnings for the affected years. (b) It is possible for the Parties in good faith to work out a mutually acceptable method for achieving this specified result. (c) No retroactive wage payments to affected employes are involved.

Such payments (as well, of course, as any deductions) would be incompatible with the no-change-in-earnings concept. (d) Minimum or base rates would be raised, along with the piece rates. But this does not mean, from the retroactive standpoint, that added compensation would be due any employes during the affected years. The cents-per-hour additions made by the Carrier to actual earnings achieved under the old, unchanged piece rates would have brought total earnings above the new base rates. To state the matter somewhat differently, if, during the years involved, the new, higher, proper piece rates had been in effect, along with the new, higher, proper base rates; and if during these years the affected employes had worked at the same pace and had experienced the same delays, et cetera, they would have received no higher total earnings than they did under the system mistakenly used by the Carrier.

In the light of all the above, the Division declines to rule specifically on any of the methods proposed by either of the Parties and directs them to unite in good-faith efforts to achieve the result explained hereinbefore.

Referee Carroll R. Daugherty who sat with the Division, as a member, when Award No. 5906 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 23rd day of September, 1955.