Award No. 5956
Docket No. CL-5765

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Paul N. Guthrie, Referee

PARTIES TO DISPUTE:

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

ERIE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the Carrier violated the National Wage Agreement of March 1, 1951, when it fails and refuses to increase the rates of pay of all employes covered by the Clerks' Agreement, in the amount of 12½c per hour effective February 1, 1951 and 6c per hour effective April 1, 1951, and,

That the Carrier shall now increase rates of pay of all employes covered by the Clerks' Agreement in effect on January 31, 1951, those amounts provided for in the National Wage Agreement dated March 1, 1951, and specifically those whose rates of pay were not increased in accordance with the Agreement, and

That the Carrier shall make such increase retroactive to February 1, 1951, and April 1, 1951, as required by the Agreement, and,

That Carrier shall compensate employes affected for wage loss sustained by reason of its failure to properly apply the National Wage Agreement effective Mar. 1, 1951, and for any subsequent changes made unilaterally by the Carrier adversely affecting the rate established by the National Wage Agreement of March 1, 1951 (NWA-1950).

EMPLOYES' STATEMENT OF FACTS: Certain employes, generally designated as X-1 and X-2 positions, covered by the Clerks' Agreement dated July 1, 1945, were given voluntary increases in their basic rates of pay effective December 1, 1950 .

March 1, 1951, a National Wage Agreement was completed which provided under Article I that all hourly, daily, weekly, monthly and piece-work rates of pay for all employes covered by the Clerks' Agreement were to be increased, effective February 1, 1951, in the amount of 12½c per hour. The Carrier failed and refused to increase the rates of certain employes covered by the Clerks' Agreement by adding to the rates of pay in effect on Jan. 31, 1951, the 12½c provided for in the National Wage Agreement. In lieu of the 12½c per hour the Carrier increased the rates of pay by the difference between the voluntary adjustment made on Dec. 1, 1950, and $21.17, which represents the monthly increase, based upon 169⅓ hours at 12½c per hour.

As a result of the approval by the Wage Stabilization Board of the March 1, 1951, National Wage Agreement permitting increases up to 10%

case before the Third Division for determination, hence the lack of precedent to be followed by your Honorable Board.

The Carrier has established that there has been no violation of the applicable Agreement or interpretations thereof. There has been no violation of the National Wage Agreement dated March 1, 1951.

For the factual reasons stated herein the Carrier respectfully submits that your Honorable Board should dismiss the claim of the Employes in this matter.

(Exhibits not reproduced.)

OPINION OF BOARD: This case is concerned with a claim of the System Committee of the Brotherhood wherein it is contended that the Respondent Carrier violated the National Wage Agreement of March 1, 1951, with respect to the way in which the wage increase provisions of the Agreement were applied to occupants of what are known as Rule 1, X-1 and X-2 positions. These positions are exempt from certain rules of the regular schedule of Agreement between the parties. However, it is conceded that they were subject to the wage increase provisions of the National Wage Agreement dated March 1, 1951. Therefore the dispute presently before the Division in the instant case is not concerned with whether or not X-1 and X-2 positions were subject to the wage increases provided in the National Wage Agreement. Rather, the dispute is concerned with the issue of whether or not the adjustments in rates of pay for X-1 and X-2 positions were made in accordance with the requirements of the National Wage Agreement.

Briefly stated the essential facts are as follows: On October 25, 1950 the Organization served notice upon the Carrier of its desire to increase existing rates of pay by twenty-five cents per hour. The wage demand was disposed of by National handling which culminated in the National Wage Agreement of March 1, 1951. While this wage demand was under consideration the Carrier unilaterally increased rates of pay for occupants of X-1 and X-2 positions on or about December 1, 1950. The National Wage Agreement of March 1, 1951 provided in part:

> "Effective February 1, 1951, all hourly, daily, weekly, monthly and piecework rates of pay for employees covered by this Agreement will be increased in the amount of twelve and one-half cents per hour applied so as to give effect to this increase in pay irrespective of the method of payment . ."

It is the contention of the Carrier that the increases given X-1 and X-2 positions on December 1, 1950 were interum increases in anticipation of increases finally agreed to in the National Wage Agreement of March 1, 1951. Therefore, it is contended that the Carrier was entitled to credit the increases given on December 1, 1950 against the adjustment due as a result of the National Wage Agreeemnt. In other words, the Carrier argues that the proper base rates for X-1 and X-2 positions to which the increases provided in the National Wage Agreement should be applied were those obtaining prior to the increases of December 1, 1950, rather than those rates obtaining on February 1, 1951.

The Organization contends that under the terms of the National Wage Agreement the Carrier was obligated to use the rates in effect on January 31, 1951 as the base rates to which to apply the increase provided in the National Wage Agreement. It is pointed out that the National Wage Agreement makes no exceptions whereby such increases as those given to X-1 and X-2 positions on December 1, 1950 could be credited against the increases provided in the National Wage Agreement. The Organization contends that the action of the Carrier in crediting the December 1, 1950

increases also affected the amount the occupants of those positions were entitled to receive under Article II of the National Wage Agreement providing for cost of living adjustments based upon the "Consumers' Price Index for Moderate Income Families for Large Cities Combined." The result was that these employes did not receive the full benefit of the 6c per hour adjustment on April 1, 1951 as provided for in Article II.

Boiled down to its essentials the issue before the Board in this claim is to determine whether it was consistent with the provisions of the National Wage Agreement for the Carrier to credit the increases of December 1, 1950 for incumbents of X-1 and X-2 positions against the wage adjustments provided for such positions in the National Wage Agreement of March 1, 1951, or whether under the terms of that Agreement the adjustments therein provided were to be added to the rates obtaining on the effective date.

A careful review of the language of the National Wage Agreement of March 1, 1951 leads to the inescapable conclusion that the wage increases provided were to be added to the rates obtaining on the effective date of the adjustments, namely February 1, 1951. The Agreement states: "Effective February 1, 1951, all hourly, daily, weekly, monthly and piece-work rates will be increased . . . ." Again, in Article I (d) with reference to monthly rates, which are the rates involved in the instant case: "Determine the equivalent hourly rate by dividing the **existing** monthly rate by the number of hours comprehended by the monthly rate . . ." (emphasis added). Thus if "existing monthly rate" is tied back into the opening sentence of Article I, "Effective February 1, 1951 . . ." it becomes clear that the intent of the National Wage Agreement was that the base rates to which the increases were to be added were those obtaining on the effective date. Again, in Article II (c) of the Agreement it is provided "Wage rates in effect February 1, 1951, will not be reduced during the life of this Agreement . . ."

The National Wage Agreement does not provide any exceptions for crediting increases made prior to the effective date against the provided incresaes. The language is clear and unequivocal. The Board does not have authority to write into the National Wage Agreement exceptions and conditions which the parties did not see fit to include.

In view of the clear language of the Agreement an affirmative Award is appropriate.

It appears that the exact question posed in this case has not been before this Board in prior cases. However, similar issues involving National Wage Agreements and the application of such Agreements to employes similarly situated as those classed as X-1 and X-2 in the instant case, have been before the Board. The conclusions herein reached in the instant case are consistent with the Board's Awards in similar cases in the part, Awards 3916, 4060, 4429, 5257 and 5905.

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 violated the National Wage Agreement of March 1, 1951, with respect to the wage adjustments made incumbents of Rule 1, X-1 and X-2 positions as pointed out in the above Opinion of the Board.

AWARD

Claim sustained in accordance with above Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

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