Award No. 6920
Docket No. CL-7009

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

A. Langley Coffey, Referee

PARTIES TO DISPUTE:

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

THE BALTIMORE AND OHIO RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the Carrier violated the National Wage Agreement which became effective September 1, 1947, and subsequent National Wage Agreements, when it fails and refuses to increase the rates of pay of apprentice clerical employes covered by the Clerks' Agreement in conformity with the terms of such National Wage Agreements.

That the Carrier shall now increase rates of pay of all such apprentice clerical employes covered by the Clerks' Agreement in effect on March 1, 1947, and thereafter those amounts provided for in such National Wage Agreement effective September 1, 1947, and subsequent thereto, and affected employes will be compensated for all wage loss caused by Carrier's failure and/or refusal to properly apply such Agreements.

EMPLOYES' STATEMENT OF FACTS: Rule 64 of our current Working Agreement effective March 1, 1947, reads in part as follows:

"The following rule will apply to apprentice clerical employes entering the service after March 1, 1947.

"(a) New employes without previous railroad clerical experience entering the service shall be paid as follows:

"First three months—80% of the basic rate of positions worked.

Second three months—85% of the basic rate of positions worked.

Third three months—90% of the basic rate of positions worked.

Fourth three months—95% of the basic rate of positions worked after which they shall receive the established rate of the position occupied.

"(b) Except as provided in paragraph (c) new employes with six (6) months or more railroad clerical experience shall be paid as follows:

submits that the awards of this Division have consistently recognized that this Division does not have authority to write rules.

For example, in this Division's Award No. 5971, it was held in pertinent part, with the assistance of Referee David R. Douglass:

> "We recognize that we are without authority to amend present rules or write new ones into the agreement. It is our opinion that a sustaining award here would write exceptions to the rules which would amount to more than an interpretation of existing rules."

Referee Paul G. Jasper, assisting this Division in Award No. 6096, reiterated this same principle as follows:

> "It is well settled that this Board cannot make rules. Its function is to interpret the Agreement as written, and apply the Agreement to the facts of a particular case."

Again in Award No. 6107 this Division, with Referee Fred W. Messmore participating, held in pertinent part:

> "This Board must determine the rights under this contract from the four corners of the Agreement. Unless language expressly or impliedly authorizing payment as claimed here can be found in the Agreement itself, this Board can not read into it such a meaning.
>
> "In Award 2491, this Board said: '* * * We can only interpret the contract as it is and treat that as reserved to the Carrier which is not granted to the employes by the Agreement.' See Awards 4304, 2622, 5307. Any change to be made in a contract to meet a condition as here presented is a matter for negotiation between the parties. We can neither legislate nor can we write into the Agreement that which is not there."

This same principle was phrased by Referee Curtis G. Shake, assisting this Division in Award No. 6208, as follows:

> "The language of the rule is clear and there is nothing for us to construe. We have no authority to re-write the rule."

In view of all that is contained hereinabove the Carrier submits that this claim is entirely without merit and respectfully requests this Division to deny it accordingly.

OPINION OF BOARD: The Parties are in accord on the controlling facts in this dispute. There is no question as to the involved apprentice clerical employes being covered by the scope rule of the applicable agreements, and that the several National Wage Agreements do apply to them. Apprentice clerks were first recognized in the local Agreement and their wage progression provided for therein in 1947. Same recognition and like pay method appear in the Agreement as revised to and including June 1, 1953.

The issue presented by this claim concerns the proper application of the stated Wage Agreements to apprentice employes insofar as putting into effect the wage increases provided by said Agreements.

The last expression by this Board in a similar case is reported in Award 5257, sustaining the point of view argued by the Employes in this docket. What may be a distinction is found in rules and Agreements in effect on the different properties.

In Docket CL-5253 (Award 5257) it is shown that a rate of pay was established at ten per cent below the wage for the position and, after six

months experience, the wage for the position to apply. Nothing more of any consequence is shown. Hence it seems the purpose was to except certain individuals who qualified only as beginners from the pay schedule fixed by Agreement. In other words, it appears that the parties themselves were dealing in personalized rates of pay by rating individuals and not positions.

In the instant case we have a clearly formalized apprenticeship pay plan with progression and rates of pay for "apprentice clerical employes," geared to "basic rates of positions worked." That the parties must have had in mind apprentice positions and not employes is borne out by Rule 15 of the Agreement now before us, which provides:

> "Positions (not employes) shall be rated and the transfer of rates from one position to another shall not be permitted."

We see in the instant docket that those on the property, who best know conditions and the probems to be solved, have agreed on the relative merits of job performance, and on equitable rates of pay for occupants of apprentice clerical positions. The worker enters at a beginning step and progresses through intermediate steps before qualifying for the wage rated position. In lieu of hourly rates, weekly rates, monthly rates or piecework rates, the pay schedule has been keyed to the basic rate of the position and percentages have been used. This arrangement has been agreed to as the more equitable and realistic for those who are receiving on-the-job training in the position to which the apprentice will ultimately progress, and for which basic rates are fixed by agreement. An orderly plan of progession is set forth, thereby indicating that both a job study and a wage analysis have been made of job content, job requirements, job skills and work performance for each step of progression as same relates to the worth of the only positions to which basic rates apply under the wage schedule. It is of no concern to the Board that "apprentice plans" usually bear a more direct relationship to mechanical trades where one must serve an apprenticeship before being recognized as a journeyman, but there is some distinction because in the mechanical trades the apprentice frequently is an hourly rated employe for pay purposes. To sustain the Employes in this case will be to destroy agreed on wage differentials by eliminating percentages which the parties have employed to preserve proper job relationships, and will serve to overturn their Agreement on the property.

The Employes see in the general wage increase and cost of living adjustments provided by the National Wage Agreements, evidence of an intent to grant uniform wage increases to all persons affected. They use this as argument for the rate increase to apply at each step of the wage progression instead of to the basic rate of pay for the position. This would accomplish a wage increase for individual employes greater than that which was put into effect in accordance with the Carrier's understanding of the stated Wage Agreements.

The dispute over the true intent of the Wage Agreements is not hard to understand. The Board, having had its share of trouble with the Agreements, may have contributed unwittingly to the confusion and may yet do more of the same. In Award 5257 we said that the National Wage Agreements "applied to employes and not to positions." Before that ruling is extended and applied generally, it may serve some purpose to re-examine our thinking and give further thought to basic principes which are peculiar to fixing rates of pay under collective bargaining agreements. In addition, we shall again examine these several Agreements, not for purposes of reviewing our earlier Award, which, as heretofore indicated, we think distinquishable, but but to use a fresh approach for deciding the present dispute.

During a controlled economy, considerable stress was placed on the need for wage increases to offset increased living costs. Many of the agreed on wage increases were granted on those terms. Closely related is the general wage increase. The term "cost-of-living adjustment" was first generally introduced in Railroad Working Agreements by the one dated March 1, 1951.

Under that Agreement, as in the others at issue, the Employes received a general wage increase but, in addition, a formula was incorporated in the Agreement for automatic upward and downward adjustments, based on the B.L.S. Consumer's Price Index, under the heading—"Cost-of-Living Basis for Wage Rate Adjustments." A more common designation has been to call the formula an "escalator clause" because written to accomplish wage decreases as well as increases. For purposes appying the cost-of-living adjustments the Agreement makes it definite and certain that the adjustment was to be applied no differently than was the general wage increase.

Until called on to assist in resolving this dispute, we always had understood that general wage increases applied to basic rates of pay under collective agreements and we still think it good logic, as we shall undertake now to prove.

The practice under labor agreements has been to organize and assign work according to class and craft, and thereafter, to rate service instead of individual employes for wage purposes. The proof is in Rule 15 quoted above. When we take the "individual" vs. the "job" approach, sight must not be lost of the proposition that one main purpose of all upward wage adjustments, by whatever name called, is to improve standards of living for the working classes. So, there is no magic for the individual worker in the fact that some wage increases have been granted under the label, cost of living and/or general wage increases. Those terms lose some of their luster in the end, because the worker always is paid for his service and not because of his individual economic burdens.

Neither the general wage increase nor the cost-of-living adjustment could give the individual employe the same take-home pay as his co-worker. It did not always result in the same cents per hour adjustment for each and every worker under the same working agreement. It was never intended that so much could be done with so little. "General wage increase" is only a term that was coined to denote that all jobs or positions (employes in absence of contract) would receive the same cents per hour or percentage adjustments. It represents a negotiating technique to take the place of job by job bargaining, out of which frequently results a lesser increase for some jobs than others.

We can understand how the impression has grown up that all individuals, irrespective of craft and class, were to be treated alike. Frequently, but not always, as where the increase was in percentages, the general wage increase accomplish a uniform cents per hour adjustment for all individuals but that was an indirect result, and was not the real purpose under labor agreements where work is organized according to craft and class. The accomplishment of the indirect result was never intended to put the individual worker above, or to take him out of the proper slot of the formalized wage schedule where his position placed him, just so he could get the same dollars or cents increase as his fellow worker.

The fallacy in the argument for the same cents per hour adjustment for all concerned in this dispute is that it ignores the percentage arrangement under the local Agreement. As stated, some general increases have been in percentages and when applied to hourly rates of pay under local agreements, the individual worker always has received more or less in the way of a money increase, depending upon the wage rated position he occupied in the wage schedule. It would be a poor rule that did not work both ways.

We can sustain these claims only if there is found in the Wage Agreements a clearly expressed intent to overturn a tried and tested basis by which the Carrier always has paid for service, not to reward individuals or to compensate for inequities between workers based upon economic factors which affect all differently.

We now examine the National Wage Agreements to ascertain if any such intent is clearly expressed therein. It is proper that we insist on being shown

that those who were legislating for a whole industry could reasonably have had in mind, or could have contemplated, as shown by their use of words, the effect of their Agreements on locally bargained pay practices and wage rates for clerk apprentices.

The language with which we are concerned, except that which is expressly quoted near the end of this opinion from the March 19, 1949, Agreement, is common, in a general sense, to all National Wage Agreements. All other reference is to the March 1, 1951 Agreement.

Article I—"Wage Increase" speaks of hourly, daily, weekly, monthly and piece-work rates of pay. No mention is made of apprentice rates. We construe, "rates of pay for employes, covered by this Agreement" to mean basic rates and the craft and class of employe subject to the Agreements. Next, we understand the cents per hour increase agreed on was to be applied so as to give full effect to the increase whether or not the method of payment is on an hourly, daily, weekly, monthly and/or piece-rate basis, and thereafter paragraphs (a) through (e) explain how this shall be done. Paragraph (f) again mentions rates of pay and not individuals, and being applicable to "Red Caps" only, demonstrates the care and forethought which went into writing the Agreement, thereby causing us to believe that if wage schedules, like the one here, were contemplated by the makers of the agreements some special mention would have been made of them.

Paragraph (g)—"Minimum Daily Increases," relates to rates of pay mentioned in paragraphs (a) to (f) and gives express recognition to local rules of agreement. Again, nothing is said about apprentice rates or individual employes.

Paragraph (h)—"Deductions," concerns "rates resulting from the increase herein granted." (Underscoring supplied).

Paragraph (i)—"Application of Wage Increase," refers to the increase in wages provided for in Article I (increase of cents per hour in all hourly, daily, weekly, monthly and piece-rates of pay for craft and class of employes covered). The increase is to be computed as the Carrier here has done:

> "* * * in accordance with the wage or working conditions Agreement in effect between each carrier and each labor organization of employes, * * *."

In paragraph (j)—"Coverage," we again have employes mentioned, but only for the purpose of identifying those who are to profit from the adjustment in pay by reason of their date of hire or special coverage.

After careful and painstaking effort and thorough study of the docket and all agreements involved, we find it incredible and most impossible to believe that any of the wage increases in question were to apply or to be applied to any other method or basis for compensating individual employes except by adjustment in basic wage rates for recognized and established positions under local agreements, same to be computed "in accordance with the wage or working conditions agreement in effect between each Carrier and each labor organization of employes."

In this case the Carrier applied the increase to the basic rate for the position. The apprentices affected were paid as they had been in the past, a percentage of the basic rate for the position adjusted as agreed, and thereupon received their proportionate share of the increased basic rate. We fail to see how they were entitled to more.

We have not overlooked the language in the "Witnesseth" clause of the March 19, 1949 Agreement, providing:

"It is hereby agreed that existing agreements between individual carriers and organizations signatory hereto will be revised in accordance with the following provisions of this agreement."

When one reads farther, it is found that the Agreement provides its own disputes machinery (Article VI) for accomplishing this revision and, resort not having been made to the proper forum for rules revision, there is some question in our mind that the Employes should now be heard to complain.

In all events, we shall not effectively write Rule 15 out of the local Agreement by giving greater prominence to individual needs than to the position which is rated for pay purposes or do so when it is contrary to the general concept that general wage increases apply to basic rates of pay only.

The claims will not be sustained.

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 did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois this 21st day of March, 1955.