Award No. 6981
Docket No. CL-6980

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Dudley E. Whiting, Referee

PARTIES TO DISPUTE:

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

CHICAGO NORTH SHORE AND MILWAUKEE RAILWAY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that Carrier's refusal to apply the provisions of Supplemental Agreement dated December 11, 1950 in calculating the pay of employes subject thereto for services performed during period of May 1, 1951 to May 15, 1951, is violative of a provision therein reading:

> "IT IS THEREFORE AGREED between the Company and the Brotherhood that, in compliance with the terms of such Mediation Agreement, the provisions of the Agreement effective April 1, 1945 and supplements thereto shall be revised effective not later than the First day of May 1951 as follows:"

EMPLOYES' STATEMENT OF FACTS: Albert Allen, employe of the Chicago North Shore and Milwaukee Railway Company, and all other employes were worked their sixth (6th) day at the straight time rate for the period May 1, 1951 to May 15, 1951, inclusive, which is in violation of the agreements of July 25 and December 11, 1950.

All of the employes worked their regular assignment with the hours and day of rest so assigned them prior to May 1, 1951.

POSITION OF EMPLOYES: There is in evidence an agreement between the parties bearing the effective date of May 1, 1951, signed under date of July 25, 1950, which reads in part as follows:

> "It is agreed between the parties hereto in settlement of the issues in the above cases, except as hereinafter provided, that Article II of the proposed agreement submitted to Chicago North Shore and Milwaukee Railway Company in May 1949, the detailed provisions of which shall hereafter be worked out between the parties hereto, will become effective not later than May 1, 1951, and the carrier will arrange conferences as early as possible to revise the individual organization agreements to that end. Half of such agreements (hours of service and rates of pay) shall become effective August 1, 1950."

As provided for in the above quoted paragraph, conferences began and continued intermittently up to and including December 11, 1950, at which time an agreement had been reached on all issues involved, and likewise had

It was the fault of neither the carrier nor the employes that inauguration of the wage and hour provisions of the 40-hour work week was delayed until approved as required by law. In the period May 1, 1951 to May 15, 1951, both inclusive, the employes were not penalized by any reduction in the earnings which they would have received had such inauguration not been delayed. Neither should, nor lawfully could, the carrier now be penalized by being required to pay a retroactive pay for this period which would increase the employes' earnings above the amount intended by the full simultaneous impact of both the wage and hour provisions of the agreement and which could not be put into effect until the approval required by law so to do had been obtained.

Claimant Brotherhood was a party to the application to the Wage Stabilization Board and at the time of execution thereof was supplied with copies of said application, a copy of which is attached hereto and made a part hereof as aforementioned. As indicated in the Wage Stabilization Board approval, same was addressed to claimant Brotherhood as well as to the carrier. The facts herein stated have been discussed with the Brotherhood.

WHEREFORE, the carrier moves that the aforementioned claim be dismissed. (Exhibits not reproduced.)

OPINION OF BOARD: On December 11, 1950 the parties agreed to reduce the hours of work to 40 per week effective May 1, 1951, and simultaneously increase wage rates to maintain the same weekly earnings. Acting by authority of the Defense Production Act of 1950 the Wage Stabilization Board issued General Regulation No. 1 freezing wages as of January 25, 1951. On April 16, 1951 the parties made joint application to that Board for approval of their agreement. That approval was not received until May 14, 1951.

It is clear that performance of the contract of December 11, 1950 was rendered impossible by operation of law until May 14, 1951 and since it was impossible to reduce the hours of work retroactively and, since the pay increase was to accompany the reduction of hours, there is no merit to the claim.

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

The Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois this 26th day of May, 1955.