Award No. 8492
Docket No. MW-8182

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward A. Lynch, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood:

(1) The Carrier's adjustment of monthly rates for Section and Fence Gang Foreman with more than one year's service as such was not in compliance with the provisions of Section 2 (a) of Article II of the Agreement of August 21, 1954;

(2) The Carrier shall correctly adjust the monthly rates referred to in part (1) of this claim;

(3) Each employe adversely affected by the Carrier's improper rate adjustment referred to in part (1) of this claim shall be reimbursed for the exact amount of monetary loss each suffered thereby.

EMPLOYES' STATEMENT OF FACTS: In adjusting the monthly rates of Section and Fence Gang Foremen with more than one year of service as such, so as to include 56 hours of holiday pay pro-rated over the twelve months of each calendar year, the Carrier failed to use the annual compensation paid to such employes as the figure to which the equivalent of 56 pro rata hours was added and likewise failed to use the monthly rate applicable to Section and Fence Gang Foremen with more than one year of service as such as the rate to multiply by 12 in order to determine the annual compensation accruing to such employes. In addition, the Carrier did not add the equivalent of 56 pro rata hours of the monthly rate paid to Section and Fence Gang Foremen with more than one year of service as such.

In lieu thereof, the Carrier used the Annual compensation paid to a first year Section and Fence Gang Foreman (the monthly rate of a first year Section and Fence Gang Foreman multiplied by 12) as the figure to which the equivalent of 56 pro rata hours was to be added and then added thereto the equivalent of 56 pro rata hours of a first year foreman's position.

All that is contained herein is either known or available to the employes or their representatives.

OPINION OF BOARD: Article II (Holidays), Section 2 (a) of the Agreement of August 21, 1954, is here involved. It is as follows:

> "Section 2 (a). Monthly rates, the hourly rates of which are predicated upon 169⅓ hours, shall be adjusted by adding the equivalent of 56 pro rata hours to the annual compensation (the monthly rate multiplied by 12) and this sum shall be divided by 12 in order to established a new monthly rate. The hourly factor will thereafter be 174 and overtime rates will be computed accordingly.
>
> "Weekly rates that do not include holiday compensation shall receive a corresponding adjustment."

The following is taken from the "Wage Appendix (Rates Effective February 1, 1951)" of the Foreman's Agreement between the parties here involved, which was effective January 1, 1953:

"Section and Fence Gang Foremen:

First year's service	271.34	per month
Except Coast Lines where rate will be	274.04	" "
Second year's service	276.34	" "
Third year's service	281.34	" "
Fourth year's service	286.34	" "
Fifth year's service and thereafter	291.34	" "

"A section or fence gang foreman who has been in service as such for 12 months will be allowed a service increase of $5.00 per month for the second 12 months on all divisions except on the Coast Lines, where his service increase will be $2.30 per month.

"Then for the System for each succeeding year's service there shall be allowed $5.00 per month increase until the maximum rate of $291.34 per month is reached. The starting date for service increase will be the first day of the month in which employed as section or fence gang foreman."

Argument offered on behalf of Carrier points out that the differential system, which is calculated on a 12 month basis from the first day of the month in which an individual is employed as a Section or Fence Gang Foreman, "has existed for quite a number of years and is a matter of agreement. It has never been disturbed or affected by across-the-board hourly wage increases."

In the action which Carrier took to effectuate the August 21, 1954 Agreement, here contested by the Organization, it "made the adjustment to the base monthly wage to which it then added whatever differential was necessary according to the years of service of the individual. By doing so the differentials were preserved."

Organization states:

"However, in adjusting the monthly rates of Section and Fence Gang Foremen as required by the aforequoted Section 2 (a) of

Article II, the Carrier did **not** use the ANNUAL COMPENSATION paid or the MONTHLY RATE applicable to Section and Fence Gang Foreman with more than one year of service as such or the equivalent of 56 pro rata hours of the monthly rates of such employes, but, in lieu thereof, used the **Annual Compensation** paid and the monthly **rate** applicable to Section and Fence Gang Foremen in their first year of service as such and the equivalent of 56 pro-rata hours of the monthly rates applicable to Section and Fence Gang Foremen in their first year of service as Section and Fence Gang Foremen. * * *" (Emphasis theirs.)

This argument was also offered in behalf of Carrier's position:

"In the Wage Appendix to the Rules Agreement the parties have negotiated, in respect to the class of employes here involved, a specific and limited differential to be applied, as provided therein, to the first year or base rate. Nothing this Board can say or do can increase or decrease that differential. Any change to be made in the differential can only be made in the manner prescribed by Article VIII, Section 24 of the Rules Agreement."

It is abundantly clear that the Agreement of August 21, 1954, Article II, Section 2 (a) stipulated that—

"Monthly rates * * * shall be adjusted by adding the equivalent of 56 pro rata hours to the annual compensation (the monthly rate multiplied by 12) and this sum shall be divided by 12 in order to establish a new monthly rate. * * *"

We cannot agree with argument on behalf of Carrier that (agreement effective January 1, 1953) "the only wage rate the parties specifically negotiated was that for the first year or base rate to which the differential is added. The other rates shown are for information purposes only. This is obvious because the same information can be arrived at through application of the differential to the base rate."

Argument by and in behalf of Carrier cites denial Award 6920 in support of its position here. The facts in this case clearly distinguish it from those obtaining in Award 6920.

In the latter, a 15½ cents per hour across-the-board wage increase was involved. In this case we have an agreement providing paid holidays—in other words, to allow each employe 8 hours pro rata for the number of holidays specified. Each employe covered was, in effect, to be paid for such holiday, when it falls on a workday of his workweek, the same as he is paid for a regular work day.

In this case we have a wage appendix clearly providing a rate, in the case of a Section or Fence Gang Foreman with 5 or more year's service in such position, of $291.34 per month. A foreman, in his first year of service as such, receives $271.34 per month. The former receives higher earnings on a monthly basis and on a daily basis than the latter.

The appendix does not refer to any of the five Section and Fence Gang Foremen monthly rates as a "basic rate;" it does refer to the $291.34 per month (for 5 or more years' service) as "the maximum rate."

In Award 6920, the Agreement there applicable (Rule 64(a)) specifically provided, for new employes without previous railroad clerical experience, a schedule of payments during their apprenticeship based on a specified percentage of the "basic rate of positions worked." There is no such provision in this case.

Here the earnings of a Section or Fence Gang Foreman increase with each year of service for the first five years, by Agreement. He receives such increase by reason of such service as a foreman. Such increase is most certainly a part of his "annual compensation."

The August 21, 1954 Agreement with respect to holidays decreeing, as it did, that "monthly rates * * * shall be adjusted," we must and will hold here that such monthly rates should have been the monthly rates of Section and Fence Gang Foremen in the five classes of service specified in the Wage Appendix to the applicable Agreement.

A sustaining Award will be made.

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 Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 8th day of October, 1958.

DISSENT TO AWARD NO. 8492, DOCKET NO. MW-8182

In this dispute, the majority, by specious reasoning and by failing to recognize and apply universal principles of contract construction, reach an erroneous conclusion.

Assuming some inconsistency as between the two rules involved, the sustaining Award here renders meaningless one of the two rules bearing on this dispute. This rule reads:

> "A section or fence gang foreman who has been in service as such for 12 months will be allowed a service increase of $5.00 per month for the second 12 months on all divisions except on the Coast Lines, where his service increase will be $2.30 per month.

"Then for the System for each succeeding year's service there shall be allowed $5.00 per month increase until the maximum rate of $291.34 per month is reached. The starting date for service increase will be the first day of the month in which employed as section or fence gang foreman."

This Board in its awards has stated time and again that language in any rule or portion of a rule may not be treated as superfluous or meaningless.[1]

One universal principle of contract construction so well established that no citation of authorities is necessary is that when terms of an agreement are inconsistent or uncertain they will be construed so that no part of the Agreement will be disregarded or made meaningless. Still another is that where language of one provision or rule of an agreement or contract is susceptible of two interpretations, one of which will nullify another and the other will give it meaning, it will be construed in such manner as to give **both** provisions force and effect.[2]

Applying these principles here, the provisions of Section 2(a) of Article II of the August 21, 1954 Agreement should have been interpreted so as not to nullify nor to make meaningless the provisions of the rule in the basic Agreement between the parties, quoted supra, and should have been construed in such manner as to give such provisions force and effect.

The Award is in serious error.

For the reasons stated we dissent.

/s/ J. E. Kemp

/s/ J. F. Mullen

/s/ R. M. Butler

/s/ W. H. Castle

/s/ C. P. Dugan

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[1] Awards 3189, 3259, 3842, 4322, 4451, 5207, 5267, 6258, 6311, 6723, among the many.

[2] For example, Award 4959.