Award No. 8833
Docket No. MW-8081

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Donald F. McMahon, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS

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

(1) The Carrier violated the Wage Agreement of 1941, and subsequent Wage Agreements of April 4, 1946; May 27, 1946; September 3, 1947; March 19, 1949; and March 1, 1951, when, effective March 1, 1955, it increased the cost of rental to its employes living in section houses, bunk houses, box-car bodies or other facilities owned by the Carrier;

(2) The Carrier reduce the rental charges to its employes to the same level as they were on August 31, 1941; and that the employes affected by this violation be reimbursed for overcharges as a result of this change.

EMPLOYES' STATEMENT OF FACTS: Effective March 1, 1955, the Carrier increased the rental charges of Company-owned section houses, bunk houses, box-car bodies or other facilities furnished to certain employes coming within the Scope of the Agreement with the Brotherhood of Maintenance of Way Employes. These increased rental charges are still in effect.

The Carrier made wage agreements with the Brotherhood of Maintenance of Way Employes under dates of February 1, 1941; April 4, 1946; May 27, 1946; September 3, 1947; March 19, 1949; and March 1, 1951, respectively. These wage agreements are, by reference, made a part of this Statement of Facts.

The Agreement dated September 1, 1949, between the two parties to this dispute is, by reference, made a part of the Statement of Facts.

POSITION OF EMPLOYES: The Fair Labor Standards Act of 1938, set a wage rate of thirty-six (36) cents per hour as the minimum wage for

There exists no Dispute between Landlord and Tenants

There exists no dispute between the landlord (Railroad) and tenants (employes and non-employes) about rental charged by Carrier for dwelling houses it owns.

Following notice by the landlord, that effective March 1, 1955, the tenants would be charged a higher rental rate for dwelling houses they occupied, each and every tenant who remained as an occupant of such dwelling house agreed with the landlord to pay the new rate of rental the Carrier charged the occupant of the dwelling house. Having entered into a new and valid contract and agreement for rental of said dwelling houses at the new and increased rental rate, and the Carrier not having breached the new contract entered into with its tenants, the landlord and tenant are in agreement as to the rental to be charged for these dwelling houses and the other provisions of the rental contract and there exists no dispute between the landlord and tenant about rental of these dwelling houses which would constitute a cause of action before any tribunal. The landlord and tenant being in agreement on this proposition and there existing no basis for an action, this alleged dispute must be denied.

All data submitted in support of the Carriers' position have been heretofore submitted to the employes or their duly accredited representatives.

Except as herein expressly admitted, the Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas, and each of them, deny each and every, all and singular, the allegations of the Organization and Employes in alleged unadjusted dispute, claim or grievance.

For each and all of the foregoing reasons, the Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas, and each of them, respectfully request the Third Division, National Railroad Adjustment Board, deny said claim, and grant said Railroad Companies, and each of them, such other relief to which they may be entitled.

(Exhibits not reproduced.)

OPINION OF BOARD: The Organization brings this docket to the Board on the contention that Carrier, effective March 1, 1955, increased the cost of rental of section houses, bunk houses and box-car bodies to its Maintenance of Way employes; that by such increase in rentals required, Carrier has violated the agreement between the parties, including National Wage Agreements by increasing such rentals in violation of the provisions of the Wage Agreement of March 1, 1951, and prior agreements.

The facts of record show that for many years Carrier has had available at many locations section houses, bunk houses and other facilities for use as living quarters, if desired, by its employes. Carrier on March 1, 1955, substantially increased the cost of monthly rental of such facilities and the Organization requests that Carrier be required to reimburse such affected employes for the alleged overcharges.

The Board finds that all the questions involved here between the parties are factually similar to the matters resolved on this property by the United States Railroad Labor Board in its Decision No. 94, and to the facts and circumstances as alleged and determined by this Board in its Awards Nos. 6738 and 6952. We agree with the findings and awards in

such similar cases and find that the claims before us are without merit and should be denied.

Since the claims herein must be denied, as above stated, we have given no consideration to the other questions raised by the parties.

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

Claims denied as per Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 21st day of May, 1959.