

Award No. 10443

Docket No. CL-10100

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(Supplemental)**

Walter L. Gray, Referee

PARTIES TO DISPUTE:

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

READING COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the Carrier violated the November 1, 1956 Wage Increase Agreement when:

1. It failed and declined to apply such wage increase to all employees covered by Rule 1, (Sections 1 and 2) of the Clerical Agreement in accordance with Article I of the Wage Agreement.

2. When it still further declined to apply, effective May 1, 1957, adjustment stipulated in Article IV — "Cost-of-Living Adjustment" to certain employees occupying positions defined as "Negotiated List No. 1."

3. That employees occupying Negotiated List No. 1 positions on and after May 1, 1957, and/or any employee appointed to such position subsequent to that date, be compensated three (3¢) cents per hour for each and every hour of compensated service, i.e., (243 1/3 hours per month, or \$7.20 per month) in accordance with Article I and IV of the Wage Agreement of November 1, 1956.

4. That the Carrier be required to enter into a joint check, supplying the Brotherhood System Committee with information relative to rates of pay of each Negotiated List No. 1 position, for the purpose of carrying out the requirements of the November 1, 1956 Wage Agreement and claims as outlined in items 1, 2 and 3 hereof.

EMPLOYEES' STATEMENT OF FACTS: On June 20, 1956 the Brotherhood System Committee served a formal notice upon the Carrier, in accordance with the procedures of the Railway Labor Act, on behalf of all employees represented by our Organization, of our desire to increase all existing rates of pay by the addition thereto of twenty-five (25¢) cents per hour, effective August 1, 1956. (Employee's Exhibit "A")

Conferences on behalf of the employees' request were held with the carrier's representatives beginning July 18, 1956. (Employee's Exhibit "B")

contract shall cover and apply to the occupants of those positions which are covered by the Agreement of March 19, 1949, generally known as the 40-Hour Week Agreement, including subsequent agreements and understandings relating thereto. Subject to the foregoing the classes of employees covered by such participation are indicated by "x" inserted in the appropriate columns below.)' "

Carrier submits that, in the light of the above quoted Letter of Understanding, it is clear that the parties to the National Agreement had no intention of changing the application of agreement rules or understandings in effect on any particular property and since on Reading Company property List 1 positions are specifically excepted from rules dealing with rates of pay and changes in rates, Carrier submits that it properly granted incumbents of these positions wage increases given to officers and other supervisory employees and is not required by agreement to apply the provisions of the November 1, 1956 National Agreement to List 1 positions.

Part 4 of the claim as filed with the Board by the Clerks' Brotherhood, seeking to require Carrier to enter into a joint check, has never been presented or discussion on the property and should therefore be denied.

Under the facts and evidence, Carrier submits that the instant case is properly referable to the disputes committee established by the parties to the November 1, 1956 agreement and should be dismissed. Further, Carrier maintains that the claim involves a moot point and should also be dismissed for this reason. Subject to the above, Carrier maintains that the claim as here presented is not supported by the rules of the effective agreement or understandings and is without merit, and requests the Board to deny the claim in its entirety.

This claim, except for part 4 thereof, as hereinbefore noted, was discussed in conference and handled by correspondence with representatives of the Clerks Brotherhood.

(Exhibits not reproduced.)

OPINION OF BOARD: This is a controversy between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees and the Reading Company.

The controversy seems to be divided into four parts and we shall dispose of these four claims in their order.

Part one of the claim obviously refers to Article I of the Mediation Agreement of November 1, 1956 as set out in the Scope Rule No. 1 of the Collective Bargaining Agreement.

In the record we find a letter dated April 5, 1957 wherein the General Chairman said in part on behalf of the Organization:

"* * * being perfectly satisfied with the wage treatment the occupants of such positions have received to date, we are closing our file on this matter."

It is very evident from the reading of this letter that this claim is not properly before us and should not be considered and the claim would, therefore, be denied as to part 1.

In our opinion it is feasible to discuss parts 2 and 3 of the claim together. It is the contention of the organization that the 1956 National Wage Settlement should apply to the Claimants, and that the Organization has the right to negotiate general wage increases for them. It is their further contention that this has been the past practice which has applied to all general wage increases.

The Carrier disputes this, and no substantial documentary evidence to support this claim has been offered. On the other hand the Carrier had very little evidence to contradict it.

After having read this record repeatedly, it is evident from the record itself that neither the Organization nor the Carrier has been completely right or completely wrong in their respective positions. They have both erred. In disposing of this case we do not intend to restrict or enlarge upon the rights of the parties with respect to future wage agreements. However, it is the opinion of this Board that the Carrier violated the Agreement bearing an effective date of November 1, 1956 when it failed to apply the 3¢ per hour cost-of-living adjustment effective May 1, 1957 as provided for in Article IV of the Mediation Agreement signed in Chicago, Illinois, November 1, 1956. This is the only part of the claim made by the Organization that we can sustain.

It is evident that the Organization has at times condoned the Carrier's application of wage increases to the positions involved based on its own formula. See letter of April 5, 1957. Parts 2 and 3 of the claim before us are sustained to the extent that the 3¢ per hour shall be made applicable and paid to Claimants in retroactive adjustment commencing May 1, 1957, and thereafter until such amount is made a part of their basic monthly wages. But any claim in excess of 3¢ per hour adjustment is hereby denied.

As to Part 4 of the claim, it is apparent from the reading of the record that this claim was not handled on the property and under the opinion of this Board and other Boards, the same cannot be considered.

In summary, it is the ruling of the Board that Part 1 of the claim be denied and that Part 4 of the claim is dismissed for the reason set forth.

It is the further order of this Board that Parts 2 or 3 of the claim are sustained to the extent, and only to the extent, as indicated in the Opinion.

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 Employees involved in this dispute are respectively Carrier and Employees 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

In summary, it is the ruling of the Board that Part 1 of the claim be denied and that Part 4 of the claim is dismissed for the reason set forth.

It is the further order of this Board that Parts 2 or 3 of the claim are sustained to the extent, and only to the extent, as indicated in the Opinion.

AWARD

Claim disposed of in accordance with Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of March 1962.