

Award No. 11475

Docket No. CL-11063

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Preston J. Moore, Referee

PARTIES TO DISPUTE:

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

**THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(CHESAPEAKE DISTRICT)**

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

(a) That the Carrier violated and continues to violate national wage agreements dated April 4 and May 25, 1946; September 3, 1947; March 19, 1949; March 1, 1951; and March 18, 1953, by and between the participating Carriers, one of which was The Chesapeake and Ohio Railway Company, represented by the Carriers' Conference Committees, and its employes, represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, when it failed and refused to increase the rates of pay of certain monthly rated employes by multiplying the hourly increase provided therein by $243\frac{1}{2}$, the number of hours comprehended by the employes' monthly rate in conformity with the terms and conditions of said wage agreements, and

(b) That the Carrier now be required to properly apply the provisions of these agreements, namely Section 1, Paragraph (d) thereof, as of the effective date of each agreement, namely January 1 and May 22, 1946; September 1, 1947; October 1, 1948; February 1, 1951; and cost-of-living adjustments provided for in the March 1, 1951 Agreement, including the so-called Guthrie Award providing annual improvement wage increase, effective December 1, 1952, to all the employes whose rates of pay have heretofore not been increased in conformity therewith.

EMPLOYES' STATEMENT OF FACTS:

1. This is a resubmission of the dispute covered by Docket No. CL-7536 (Award No. 7296). The Board remanded the claim with directions to the Parties to consider each position or group of positions separately. The Board retained jurisdiction and provided that if the Parties could not reach agreement, the dispute might be resubmitted to the Board. The record in Docket

practice to afford compensatory time off in consideration of time worked in excess of normal work hours for the office or department, so that employees occupying the 28 positions are not entitled to have their rates further adjusted.

5. Even if it were held that positions in the group representing the difference between 85 and 28 positions (positions covered by the special agreements referred to in Item 2 above) are entitled to consideration as to compensatory time off in the instant proceeding, the evidence shows that it has been the practice, as contended by the Carrier, to afford such time off, any confusion or question in this respect stemming from misunderstanding on the part of individuals as to the definition of compensatory time.
6. Finally, that if it should be held that any of the positions in the 85 group are on the $243\frac{1}{2}$ hour (or $245\frac{1}{2}$ hour basis after holiday payments negotiated) basis as contended by the Employees, the Carrier will have full right to reduce the rates by $1/7$ in placing them on a 5-day basis, it having been agreed between the parties that the majority of the positions will be on a 5-day basis, with overtime for any work in excess of 8 hours a day, 5 days a week.
7. The claim should be denied in its entirety, both on the merits and on the basis of laches or estoppel.

All data contained in this submission have been discussed in conference or by correspondence with the Employee representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: This case is a resubmission ex parte of the dispute in Docket CL-7536 which resulted in Award 7296 rendered April 20, 1956. That award remanded the dispute to the parties for disposition in accordance with the opinion. The opinion directed the parties to consider each position, or group of similar positions, separately. If it were found that a position was subject to being worked $243\frac{1}{2}$ hours per month without any compensatory time or pay, such hours would be the monthly comprehended hours of the position. If it were found that compensatory time or pay were provided for over and above certain hours per week or month, such hours should be calculated on a monthly basis and the hours so found should constitute the monthly comprehended hours of the position. The opinion further provided that if agreement could not be reached as to the comprehended monthly hours of such positions the dispute might be resubmitted to this Board.

The parties hereto have resubmitted the dispute. Petitioner has also submitted copies of 74 questionnaires to employees. The evidence so submitted is insufficient to establish comprehended hours of the positions involved.

Award 4060 held that the Wage Agreement did not establish the hours of the month to be worked in any precise figure. The comprehended hours of the month are those contemplated by the parties in calculating the pay assigned to the position. It is from the evidence and not from the agreements that this must be determined.

With the evidence before the Board in Award 7296, the Board held there was insufficient evidence to determine the monthly comprehended hours. At this point of time, seven years later, we cannot find the additional evidence is sufficient for this Board with any logic or reasoning, to establish the comprehended hours per month. It is unfortunate that the parties hereto could not have settled this dispute as set forth in Award 7296. It is distressing to settle this question because of lack of proof. However, we have no alternative but to deny the claim upon that basis.

For the foregoing reason, we find the Agreement was not violated.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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

That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 6th day of June 1963.