

The Second Division consisted of the regular members and in addition Referee Harold M. Weston when award was rendered.

Parties to Dispute: (System Federation No. 7, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(
(Burlington Northern Inc

Dispute: Claim of Employees:

1. That under the current agreement Carmen John Helzer, H. Jacobs, M. L. Hessheimer and L. A. Moser, Lincoln, Nebraska were improperly compensated for services performed as Foremen on dates given below;
2. That the Carrier be ordered to additionally compensate the above-mentioned Carmen the difference in pay of September 30, 1972 rate and the present rate for the dates shown below, which represents the work days that each relieved supervisors (foremen) under Rule 32 of the current agreement.

On October 27, 1973, November 3, 6, 7, 8, 9, 10, 13, 14, 15, 16, 17, 20, 21, 22, 24, 27, 28, 29, 30, December 1, 13, 26, 27, 1972 and January 8, 9, 10, 11, 12, 15, 24, February 5, 6, 21, 22, 26, March 5, 8, 9, 13, 14, 1973, Carman John Helzer temporarily filled the position held by Foreman D. D. Burt.

On November 6, 7, 8, 9, 10, 13, 1972 Carman H. Jacobs temporarily filled the position held by Foreman Paul Portsche.

On October 25, November 25, December 4, 5, 16, 17, 18, 19, 20, 23, 24, 25, 26, 27, 1972 and on February 17, 18, 1973 Carman M. L. Hessheimer temporarily filled the position held by Foreman W. Meyn; on October 28, November 28, 1972 temporarily filled the position held by Foreman L. W. Hixon; on December 28, 29, 1972, February 28, 1973 temporarily filled the position held by Foreman J. W. Inglesbright; and on December 13, 14, 15, 1972, January 8, 9, February 26, 1973 temporarily filled the position held by Foreman Paul Portsche.

On October 31, November 14, December 12, 13, 14, 15, 16, 1972 and on January 31, 1973 Carman L. Moser temporarily filled the position held by Foreman G. Rezek; on November 15, 1972, January 8, 9, 10, 11, 1973 temporarily filled the position held by Foreman P. Worster; and on November 15, December 20, 21, 22, 23, 24, 27, 28, 29, 30, 31, 1973 temporarily filled the position held by Foreman W. Dorsey and on January 5, 6, 7, 8, 1973 temporarily filled the position held by Foreman J. Tapley.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Claimants are carmen who were assigned temporarily to fill foremen's positions on the claim dates. They were paid the foremen's rate that prevailed at that time but did not receive a subsequent increase that was agreed to for foremen on March 15, 1973, and made retroactive to October 1, 1972. The period of retroactivity covered the dates on which Claimants worked as foremen and they now seek the additional amount involved in the foremen's increase.

Carrier contends that the claim must be dismissed since it was not filed within the sixty day time limit prescribed by Rule 34.

The claim was presented in writing to the proper Carrier officer on May 18, 1973, and the critical question is whether the occurrence upon which the claim is based took place during the sixty day period immediately preceding that date, as required by Rule 34. Carrier contends that the date of the occurrence is March 15, 1973, the effective date of the agreement to increase the wages of foremen. We disagree.

No claim arose until payment of the increase was made and Claimants discovered that they would not receive the increase. That conclusion is inescapable, in our opinion, and we will overrule Carrier's time limit objection. See Second Division Awards 2467, 2480 and 5385.

We also find no merit in Carrier's theory that the claim filed with the Board contains a substantial variance. That claim is specific and clear and does not enlarge or vary substantially from the claim processed on the property.

As to the merits, the claim is well supported by Rule 32 which reads as follows:

"An employe assigned temporarily to fill a Foreman position will assume the hours of service and rate of pay applying to such position. Daily rate to be determined by dividing the monthly rate by the number of days Foreman is required to work during that month."

The language to which the parties have committed themselves in that Rule and particularly the formula agreed upon in its second sentence clearly establish that Claimants are entitled to have the retroactive pay included in the rate paid them for temporary service as foremen. This is not a wage rate that this Board is establishing; it is a rate of compensation due Claimants by reason of the parties' own agreement.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

○ Dated at Chicago, Illinois, this 30th day of January, 1976.