Award No. 73
Docket No. 56
2-NYC-CM-'36

NATIONAL RAILROAD ADJUSTMENT BOARD
Second Division

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 103, RAILWAY EMPLOYES' DEPARTMENT, A. F. OF L. (CARMEN)

THE NEW YORK CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES.—That Messrs. L. H. Birr, J. A. McAllister, A. E. Higgins and H. L. Long, car inspectors and repairers at Toledo Union Station, should be paid 81¢ per hour for the entire day, when they performed work for which that rate is paid for less than 4 hours on October 8, 1934.

JOINT STATEMENT OF FACTS.—On October 8, 1934, Messrs. L. H. Birr, J. A. McAllister, A. E. Higgins, and H. L. Long, classed as inspectors and repairers, rate 74¢ per hour, were required to remove and replace a coupler on New York Central Mail Car 3746, work being performed on a regular designated repair track at Toledo Union Station. For this particular job, each man was compensated for one hour at the passenger car repairers' rate of 81¢. The remainder of the day, or 7 hours, they devoted to regular inspector and repairers' duties for which they were paid the inspectors' rate of 74¢ per hour.

POSITION OF EMPLOYES.—The committee contends that car inspectors and repairers working at the 74¢ per hour rate, when required to perform work for which 81¢ per hour is paid, should receive the higher rate for the entire day of 8 hours, and not for the time so employed, if they perform the work calling for the 81¢ rate 4 hours or less in any one day.

We claim when employes are required to perform work for which a higher rate is paid, that they should be paid under the provisions of Rule 16, which provides, when an employe is required to fill the place of another employe receiving a higher rate of pay he shall receive the higher rate for the day or days he is so engaged, but if required to fill temporarily the place of another employe receiving a lower rate, his rate will not be changed. In this case the employes were required to perform work for which the higher rate is paid, and we believe they should be paid in accordance with Rule 16; it is the only rule in the working agreement that covers such a case, in our opinion.

We believe that the management had no right to pay the carmen involved under the provisions of Rule 33. That rule applies to operators of the welding and cutting torch only. The second paragraph was written so that each craft could use the welding or cutting torch in performing their work without any additional expense to the management.

It has been claimed that the management issued instructions in 1926 when employes performed work calling for the higher rate for 4 hours or less, that the second paragraph of Rule 33, and not Rule 16, would apply. We believe that statement cannot have any bearing on this dispute, it was not necessary to use either method but little, if any, in the past, until the management changed the rates of the passenger car inspectors and repairers at Cleveland, Toledo, and Chicago, in 1934, from 81¢ to 74¢ per hour, the change made in the rates of pay was responsible for causing this dispute.

POSITION OF CARRIERS.—The claim of the employes for the higher, or 81¢, rate for the entire day, by reason of the performance of this work on the mail car, is based on Rule 16 of the agreement.

As previously stated, the New York Central was able to negotiate a substitute rule with its committees. At the time the conferences were held with our committees, the representatives of the management were aware of the general objections to the former rule as extended by the rulings and decisions. The rule that was finally agreed upon was proposed by the carrier representatives and was designed to eliminate the objectionable extension of the former rule which resulted from the rulings and decisions referred to. The proposed rule was accepted by the shop crafts' committee, and there should be no doubt

that the committee recognized that the words "for the day or days he is so engaged" were incorporated into the rule for the express purpose of eliminating claims for continuous pay at higher rates for the entire eight hours of the day when employes were engaged on higher rated work for only a portion of a day.

It will be observed that Rule 16 refers to circumstances where "an employe is required to *fill the place of another employe* receiving a higher rate of pay." Notwithstanding the intent of the rule at the time it was negotiated, as brought out in preceding paragraphs, it developed in 1926, that all of the branches of the equipment department did not have a uniform understanding of the rule, some having established the practice of making varying pay allowances when an employe filled the place of another employe receiving a higher rate of pay for only a portion of a day. Notwithstanding the rule itself did not require any additional pay in the circumstances, in order not to deprive employes of additional compensation where such practices had been established. and also to provide a uniform method of pay, instructions were issued in August, 1926, that the employes who filled the higher rated positions should be paid in accordance with the principle set forth in the last paragraph of Rule 33, which reads:

> "When performing the above work for four (4) hours or less in any one day, employes will be paid the welders' rate of pay on the hourly basis with a minimum of one (1) hour; for more than four (4) hours in any one day, welders' rate of pay will apply for that day."

Under our method of applying Rule 16 the employes receive the higher rate for the entire day when engaged on higher rated work for more than four hours, while for four hours or less they receive the higher rate on the hourly basis with a minimum of one hour. The management could, under a literal interpretation of the rule, decline to pay the higher rate unless the full day is devoted to higher rated work. However, we have favored the employes by extending the provisions of the rule to include higher rated service where only portions of the day are involved and applied the principle of Rule 33 in making payments therefor. This is certainly fair and equitable and more than is contemplated by the rule.

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.

The parties to said dispute were given due notice of hearing thereon.

It was disclosed at the hearing that two higher rated employes were regularly assigned at the Toledo Union Station, and that on October 8, 1934, these two employes were off duty, which necessitated the use of lower rated men to do the work ordinarily performed by the assigned higher rated class of employes. While there were only two vacancies, four men were used by the carrier in order to expedite the work.

Rule No. 16, which bears the caption "Filling Vacancies", reads as follows:

> "When an employe is required to fill the place of another employe receiving a higher rate of pay, he shall receive the higher rate for the day or days he is so engaged; but if required to fill temporarily the place of another employe receiving a lower rate, his rate will not be changed. This does not apply to apprentices."

A vacancy in the higher rated position existed under this rule.

AWARD

Car inspectors L. H. Birr, J. A. McAllister, A. E. Higgins, and H. L. Long are entitled to the higher rate for the entire day on the date shown.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: J. L. MINDLING
Secretary

Dated at Chicago, Illinois, this 20th day of July, 1936.