Award No. 139

Docket No. 142

2-IC-CM-'37

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 99, RAILWAY EMPLOYES' DEPARTMENT, A. F. OF L. (CARMEN)

ILLINOIS CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: That Carmen O'Neal, Anglin, Willoughby and the other carmen assigned to fill their places be paid the difference between seventy-three (73¢) cents per hour and seventy-one (71¢) cents per hour for all time worked at the lower rate.

JOINT STATEMENT OF FACTS: Carmen O'Neal, Anglin, Willoughby and the other carmen who were assigned to fill their places hold seniority rights as carmen at McComb, Mississippi. Prior to the date shown opposite each man's name, they were paid seventy-three cents per hour, and subsequent to these dates the men have been paid seventy-one cents per hour.

Name	Date
James O'Neal	November 3, 1935
J. T. Anglin	November 19, 1935
J. C. Willoughby	November 3, 1935

POSITION OF EMPLOYES: This case has been handled in accordance with the established practice of handling grievance cases on the Illinois Central System and we contend that Rule 150 of the agreement between the Illinois Central System and System Federation No. 99 has been violated by the carrier at McComb, Mississippi.

> Rule 150: "The application of the rate provided for in this agreement shall not operate to reduce present rate of pay for any individual employe or on any class of work."

On November 3 and 19, 1935, the employes' hourly rate of pay was reduced from seventy-three cents per hour to seventy-one cents per hour, as shown by Exhibit A and the Joint Statement of Facts.

Prior to the above mentioned dates and the effective date of the existing agreement (April 1, 1935) it was the established practice of the carrier to maintain but one hourly rate of pay for the carmen employed in the car department at McComb, and at no time prior to the above mentioned dates (November 3 and 19, 1935) has this class of work, as performed by the employes involved in this dispute, been paid for at a lower hourly rate of pay to the other carmen employed at this point.

In the handling of this dispute with the representatives of the carrier they have stated that the work at McComb has been changed to the extent that they were justified in reducing the hourly rate of pay of the employes assigned (Exhibits B, C and D) to the performance of this work. We further contend and it will be noted in Exhibit A there was no change in work of these employes and it has been the established practice at McComb for the carrier to build its cars by a system that is known as a progressive or spot

Prior to the separation of body work from truck work, both were performed by freight carmen. With the volume of truck work reaching a point warranting assignment of a gang specifically to this work, carrier's prerogative is clearly delineated in the recognition, under Rule 149, of the disparity between work performed by "Freight Carmen" and "Freight . . . Carmen—Truck work only."

At the time of the organization of the truck gang, Mr. O'Neal, Mr. Anglin and Mr. Willoughby requested assignment to truck work. Their request was granted; and their voluntary action in accepting work carrying the lesser hourly rate of pay is of their own responsibility. They were privileged to choose assignment to work paying the greater rate, but, because of more desirable working conditions and lesser working hazards from their individual standpoint of preference, they chose assignment to truck work.

Relief men assigned exclusively to truck work are paid 71¢ an hour.

Rule 150 provides:

> "The application of the rate provided for in this agreement shall not operate to reduce present rate of pay for any individual employe or on any class of work."

We do not believe any argument is necessary to convince this Board that, under the provisions of cited rules, when an employe changes positions the carrier is not required to continue paying him at the rate obtaining at the time the schedule was negotiated in event the agreed rate on his new position is below that rate.

The rule does not provide that, regardless of the position filled or class of work performed, carrier must always pay the employe not less than the rate he was receiving at the time the agreement was negotiated.

As shown above, we see no ground for the claim and we respectfully ask that it be denied.

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.

The arbitrary changing of the hourly rate of pay for Carmen O'Neal, Anglin and Willoughby was contrary to the provisions of Rules 19, 149 and 150 of the agreement in effect.

AWARD

Claim of employes sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 3rd day of February, 1937.