

Award No. 191

Docket No. 179

2-TC-BK-'37

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee John P. Devaney when award was rendered.

PARTIES TO DISPUTE:

**RAILWAY EMPLOYEES' DEPARTMENT, A. F. OF L.
(BLACKSMITHS)**

TENNESSEE CENTRAL RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: Under the provisions of Rule 88 of the current agreement on the Tennessee Central Railway, W. G. Park, hammersmith, should be paid ten cents per hour above the minimum rate paid blacksmiths continuously since his assignment to hammersmith work, February 1, 1933.

STATEMENT OF FACTS: During the early part of the year 1933, Garfield Frogg, hammersmith in the Nashville shops of the Tennessee Central Railway, assigned and paid ten cents per hour above the minimum rate paid the blacksmiths, died. After his death, Blacksmith W. G. Park was assigned to the job, but has not been paid the differential continuously. Rule 88 reads:

"Rule No. 88: Hammersmiths at Nashville performing work under a large steam hammer after such work has been heated in a closed furnace, the work being performed under hammer without the aid of regular blacksmith's tools, doing such work as making billets from scrap and heavy forging from scrap billets or other heavy material, will receive ten cents per hour above the minimum rate paid blacksmiths at that point.

Frame fire blacksmiths at Nashville handling four inch material will receive five (5¢) cents per hour above the minimum rate paid blacksmiths at that point; but only for the days such work is actually performed.

Heaters for frame fire blacksmiths will receive ten (10¢) cents per hour above the minimum rate paid helpers at the point employed.

Helpers working with hammersmiths and blacksmiths working material of 4 inches and over will receive five (5¢) cents per hour above the minimum rate paid helpers at the point employed.

Furnace operators (heaters) at Nashville heating material for hammersmiths in a closed furnace will receive the minimum rate paid blacksmiths.

Autogenous welders shall receive five (5¢) cents per hour above the minimum rate paid blacksmiths at point employed."

POSITION OF EMPLOYEES: Rule 88 of the current agreement was applied for more than ten years just as it is being applied on other railways.

Hammersmith Frogg received the ten cent differential rate for every hour he worked on the job. Following his death when W. G. Park was placed on the job, he did the same work without the rate being applied continuously. The shops of this carrier have not operated full time for several years. This is especially true of the blacksmith shop. All of the employees in this department were cut off a good portion of the time while men in other departments were working.

Official interpretation of the National Agreement rules pertaining to the special rules of blacksmiths, which contain the same principles as the rules of the Tennessee Central Railway agreement, are clear in that it is the intention of the rule that the rate shall be paid continuously. A number of decisions can be found on pages 245, 246, 247, 255 and 257 of the National Agreement Interpretation which bear this out.

Since this principle is clearly established and has been in effect for many years, it is our contention that the ten cent differential should apply to this job regularly. As before stated, the management did not question this prior to the time that Mr. Park was placed on the job. It will be seen from the rule that it makes no provisions for part time payment.

We respectfully request that inasmuch as Mr. Park is performing all the heavy work when the shop operates, working out of furnace and fire at different times, that he be paid the differential rate for all time worked.

POSITION OF CARRIER: Blacksmith W. G. Park occasionally performs the character of work described in the rule as hammersmith work. From February 1, 1933, to April 30, 1937, inclusive he performed such work on 43-3/8 days, according to the time turned in by him, and for which he was paid the differential of ten cents per hour above the minimum blacksmith's rate for the entire time made by him on each of those days. This is an average of considerably less than one day per month on hammersmith work. As a matter of fact, the only hammer in use in blacksmith shop up to October 21, 1936, was a light 1,500 pound hammer. The various surveys made by the committee representing the employee could not but fail to sustain the claim on the basis of the class of work performed, and the claim is now apparently based wholly on the ground that the blacksmith who, previous to the time Blacksmith Park performed any such work, did what hammersmith work there was to be performed was paid ten cents differential for every day worked. This rate was granted that employee during Federal control when the operation of this railway was consolidated with others, this carrier having no control over the action taken, and after Federal control the rate was erroneously applied until the death of said blacksmith. This carrier is cognizant of Rule 124 of the National shop agreement and the decisions rendered thereon by Railway of Adjustment No. 2, but our rule differs from the rule of the National Agreement in that our rule does not provide for a classification as a hammersmith for men who perform hammersmith work, and, therefore, does not require payment of the differential on days when such work is not performed.

OPINION OF THE DIVISION: The dispute herein hinges upon the question whether or not there is any requirement that a blacksmith who occasionally does hammersmith work be classified as a hammersmith and paid the regular rate for hammersmiths continuously. At the present time the carrier pays Blacksmith Park the hammersmith differential only for the days on which he performs hammersmith work.

There apparently is little controversy as to the amount of hammersmith work performed by Park. It averages about one day per month. There is likewise no dispute concerning the fact that the prior employee, Frogg, was paid the hammersmith differential continuously.

It is the argument of the employes that under Rule 88, the carrier is under an obligation to pay Park the hammersmith differential continuously. It is the contention of the carrier that there is nothing in Rule 88 requiring anything but payment of the differential on the days during which the employe does hammersmith work.

We are constrained to conclude that the position of the carrier is correct. Only a small portion of the work done by Park is hammersmith work. Practically all of the work is ordinary blacksmith work. There is no requirement in Rule 88, nor in any other rule, that a blacksmith who does a small amount of hammersmith work be **classified** as a hammersmith and be paid the hammersmith differential continuously.

Rule 88 merely requires payment for hammersmiths of the differential of 10¢ per hour. Nothing in the rule compels classification of a blacksmith as a hammersmith when such blacksmith does an insignificant amount of hammersmith work. We cannot read such a requirement into the rules. Rather, we must determine the dispute on what is already contained in the existing rules.

We have not overlooked the contention of the employes with regard to paragraph 2 of Rule 88. However, we do not deem that the implications derived from this paragraph are sufficient to impose the requirement upon the carrier contended for by the employes.

Neither have we overlooked the fact that the prior employe, Frogg, was paid the differential continuously. The fact that this was done, however, does not impose a requirement on the carrier that it be continued, if the rules do not contain such a requirement.

The claim of the employes must 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 carrier did not violate its agreement with the employes by not paying the hammersmith differential continuously to W. G. Park.

AWARD

Claim of the employes denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 9th day of December, 1937.