

Award No. 342

Docket No. 354

2-Va.-FT-'39

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 40, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (Federated Trades)**

THE VIRGINIAN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That C. H. Byrd, demoted differential rated pipe fitter helper, should be reclassified as a pipe fitter helper, given his previous differential rate, and restored to his former job of operating pipe cutting and threading machine, with pay for all time worked since June 9, 1938, until date of adjustment, at the rate of the difference between helper's rate and that of his former differential rate of 75¢ per hour.

EMPLOYEES' STATEMENT OF FACTS: Mr. C. H. Byrd was employed by the Virginian Railway Company on May 1, 1923. He was assigned to work as a pipe fitter helper in the pipe and tin shop at Princeton, W. Va., at which assignment and work he continued until the month of March, 1924, when he was assigned to operate pipe cutting and threading machine and given a differential rate of ten cents per hour under the regular mechanic's rate. He continued at such work and rate of pay until June 10, 1938 (a period of over fourteen years). He was on that date demoted by bulletin posted on bulletin board, dated Princeton, W. Va., June 7, 1938, notifying him that his differential rate was abolished effective Friday, June 10, 1938. That part of the bulletin which affected Byrd is quoted below:

"BULLETIN

TO ALL CONCERNED: Princeton W. Va., June 7th, 1938.

Due to continued decline in business it is necessary to make a further reduction in expenses, and in accomplishing this the following reductions in force and abolishment of rates will be effective Friday morning 7:30 A. M. June 10th, 1938. Men affected are as listed.

REDUCTIONS IN FORCE

(Here were listed eighteen employes which this case does not concern.)

RATES ABOLISHED

3 Machinist Helpers

C. H. Byrd
O. C. Miller
J. J. French

1 Acetylene Cutter

H. C. Farley

SIGNED. F. S. Tinder
Shop Superintendent."

"Princeton, W. Va., August 5, 1924.

Mr. Thomason:

In connection with yours of July 30 relative to increasing the rate of C. H. Byrd to 63¢ an hour.

As there is no 63¢ rate in the Pipe Fitter's classification, we are arranging to carry C. H. Byrd on the Machine Shop roll as of August 1st as advanced Machinist Helper, rate 63¢ an hour.

Yours truly,

(S) F. Welboan,
Shop Superintendent."

In the early part of 1938, the superintendent motive power started checking up on the classification and class of work of employes in the various mechanical departments when it was discovered that Byrd was working in the pipe and tin shop assigned to pipe and tin helper's work and rated as a differential machinist helper and carried on the latter's seniority roster.

Differential rates of pay for pipe and tin helpers never have been established by the railway company for the class of work performed by this class of employes. Therefore, the rate, not being applicable to the class of work to which he was assigned and being established by payroll padding, was immediately abolished. See Exhibit A.

Sheet metal worker helpers' rule of the existing agreement, covering this class of work, reads:

"Rule 88

Employes regularly assigned as helpers to assist sheet metal workers and apprentices in their various classification of work (including dismantling parts for repairs), shall be known as sheet metal worker helpers."

The application of this rule cannot properly be expanded to include a differential rate of pay for work not specifically within its scope. That, under the Railway Labor Act, is properly a matter for negotiations only. Further, the Railway Labor Act does not authorize the National Railroad Adjustment Board to change the rate of pay of an agreement, nor to determine what the rules shall be, but it shall have only the right of interpretation of whatever rates of pay or rules are agreed upon. Therefore, the power to compel the railway company to restore Mr. Byrd's previous differential rate as requested by the employes not being conferred upon the Board, the railway company requests that the Board dismiss the request for lack of jurisdiction.

In connection with the change in his classification, if the employes so desire, the railway company is willing to reclassify Mr. Byrd as a pipe and tin helper with seniority unimpaired.

For reasons the railway company has hereinbefore stated, the railway company requests that the claim of the employes be acted upon in line therewith.

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 waived right of appearance at hearing thereon.

C. H. Byrd was first employed May 1, 1923, as a pipefitter helper, and in March, 1924, was assigned to operate pipe cutting and threading machine, which is sheet metal workers' work as provided in Rule 86.

While operating the pipe cutting and threading machine, Byrd was allowed a differential rate and classified under provisions of Rule 51 as a machinist helper. There are no provisions for such differential rate contained in sheet metal worker helpers' Rule 88.

The whole transaction was irregular and not at all in compliance with the rules of the current agreement; therefore, the only thing that remains to be done in fairness to everyone is to give C. H. Byrd his seniority rights as pipefitter helper as of May 1, 1923.

AWARD

C. H. Byrd shall be reclassified as a pipefitter helper with seniority unimpaired as of May 1, 1923.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 7th day of June, 1939.