

Award No. 713

Docket No. 730

2-T&P-MA-'42

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 121, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (MACHINISTS)**

THE TEXAS AND PACIFIC RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: Claim of Machinist P. B. Pipes for five cents differential rate for operating boring mill in the place of O. L. Vannatta on July 17, 1941, under Rule 8, current agreement, Fort Worth, Texas.

EMPLOYEES' STATEMENT OF FACTS: Machinist O. L. Vannatta receives a five cents differential which is an arbitrary rate. He was off on July 17, 1941, and his place filled by Machinist P. B. Pipes, who was denied this differential rate.

POSITION OF EMPLOYEES: On July 17, 1941, Machinist O. L. Vannatta, who operates a boring mill in the machine shop at Fort Worth, Texas, and who receives a five cents differential rate of pay, laid off. His place was accordingly filled by Machinist P. B. Pipes for the day who was paid the regular rate of 86¢ per hour but claimed this five cents differential account filling Vannatta's place, which was denied. We, therefore, contend that Rule 8 of the current agreement is being violated.

"Filling Temporary Vacancies:

When an employe is required to fill the place of another employe receiving the higher rate of pay, he shall receive the higher rate. * * *

When the current agreement was written, a memorandum was issued to protect those arbitrary rates then in effect to prevent any reductions. This memorandum reads as follows:

"It is hereby agreed that all excess rates now in effect for various mechanics performing work as defined in Rules Nos. 39a-46a-57a-64a-73a and 82a—not specifically mentioned in Rule No. 100 (Rates of Pay) shall be maintained so long as the present occupant continues in his present position; but when such excess rated positions become vacant (except by reason of reduction of forces), the established rate as specified in Rule No. 100 will then apply."

From this you will note that it was agreed that all excess rates then in effect for various machinists performing work as defined in rules mentioned above, not mentioned in Rule 100, current agreement, rates of pay would be maintained so long as the present occupant continues in his present position, but when such excess rated position becomes vacant, except by reduc-

The employes have agreed that Vannatta was on one of these excess rated positions, proven by Mr. Mulholland's letter of September 8, 1941, to Assistant Vice President James, reading in part as follows and submitted as Exhibit A.

"Machinist Vannatta runs a boring mill in the machine shop and receives an arbitrary rate of five cents an hour differential. . . ."
(Emphasis ours.)

The carrier feels it has proven beyond doubt that:

1. Memorandum of agreement does cover the case at hand, this memorandum being signed by the employes' president of System Federation No. 121, April 1, 1937.

2. This memorandum clearly states that when the employe on this differential rate is absent from the position, the memorandum is silent as to under what circumstances absence is to be, except reduction in force, that the differential will not apply to other mechanics working this position.

3. Vannatta was not furloughed in this case.

4. The employes understand that this was a differential rate assigned Vannatta in the meaning and intent of memorandum signed April 1, 1937.

5. Rule 8 does not apply to this case in view of this memorandum.

6. The employes have no claim properly before your Board.

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 is argued by the employes that Rule 8 is the applicable rule in this case and that it applies regardless of how the rate of an individual was created or continued.

It is argued by the carrier that Rule 8 applies only to those jobs that carry the rates agreed to as set out in Rule 100, and that the rates preserved as a result of the Memorandum dated April 1, 1937, are rates preserved to individuals only, and that none other can receive them.

The preponderance of evidence seems to support the carrier's argument.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 24th day of March, 1942.