

Award No. 882

Docket No. 779

2-Erie-FO-'42

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 100, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (FIREMEN & OILERS)**

ERIE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That the carrier violated Rule 18 and Section 6 of the amended Railway Labor Act and that accordingly Mr. A. Muzi be reimbursed for all pay lost as a result of having his hourly rate cut.

EMPLOYEES' STATEMENT OF FACTS: Mr. A. Muzi worked as engine wiper for ten years prior to November 25, 1941, on the 11 to 7 trick at the rate of 47¢ per-hour. Mr. J. Agnelli, firecleaner on the 11 to 7 trick, receiving 55¢ per-hour, bid in another job. This created a firecleaner's vacancy on that trick which was bid in by Mr. A. Muzzi and he was so assigned November 25, 1941, at which time his rate was arbitrarily reduced from 55¢ per-hour to 50¢ per hour.

POSITION OF EMPLOYEES: That there is no wage scale in the current agreement of 1934 and it was understood that existing rates would be maintained until changed in accordance with Rule 18 which reads as follows:

This agreement shall become effective October 1, 1934, and shall continue in effect until May 1, 1935, and thereafter until revised or changed, of which intention thirty (30) days' notice shall be given by the party desiring the change.

That the carrier violated Section 6 of the Amended Railway Labor Act when it cut this rate in violation of the section of the Act which reads as follows:

Carriers and representatives of the employes shall give at least thirty days' written notice of an intended change in agreements affecting rates of pay, rules, or working conditions, and the time and place for the beginning of conference between the representatives of the parties interested in such intended changes shall be agreed upon within ten days after the receipt of said notice, and said time shall be within the thirty days provided in the notice. In every case where such notice of intended change has been given, or conferences are being held with reference thereto, or the services of the Mediation Board have been requested by either party, or said Board has proffered its services, rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon as required by Section 5 of this Act, by the Mediation Board, unless a period of ten days has elapsed after termination of conferences without request for or proffer of the services of the Mediation Board.

1. The hourly rate of A. Muzi was not "cut" as alleged in employees' statement of claim.
2. The uniform rate of fire cleaners was established in 1931, prior to the effective date of the Railway Labor Act, as amended, and there was no dispute pending.
3. The rate was established prior to Rules for Mechanical Department Employees (Firemen & Oilers) effective October 1, 1934. A position of fire cleaner was established at Salamanca, New York effective October 16, 1933, at the uniform rate of forty-five (45) cents per hour in accord with the 1931 understanding.
4. A. Muzi, the employee involved in this claim, worked as fire cleaner at Salamanca, New York, December 1, 1939, to August 15, 1941, rate fifty (50) cents per hour, without protest.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

The evidence of record shows that the fire cleaners' rate of pay at Salamanca, N. Y., was such as is claimed by the employees when the present agreement was taken over by System Federation No. 100, and no evidence has been produced to show that the parties subsequently agreed to reduce the established rate of pay for these employees at the point involved.

The claim of the employees that no authority has been shown for the right of carrier to reduce existing rates of pay subsequent to the acceptance of the existing rules of agreement, which included the then existing rates of pay, must be sustained.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 10th day of December, 1942.