

Award No. 960

Docket No. 893

2-Erie-BK-'43

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee I. L. Sharfman when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 100, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (BLACKSMITHS)**

ERIE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: That at Hornell, New York back shop the carrier did and is violating agreements by

(a) Changing the classification of claimant Jacobs from hammer-smith to that of blacksmith.

(b) The payment of claimant Jacobs a split rate, less than the hammersmith rate continuously.

That the carrier be ordered to—

(a) Reclassify claimant Jacobs as hammersmith.

(b) Pay claimant Jacobs the hammersmith's rate continuously retroactive to October 23, 1942.

EMPLOYES' STATEMENT OF FACTS: At Hornell, New York shops, prior to 1935, Claimant Jacobs was recognized, classified and paid continuously as a hammersmith. He then worked on big steam hammer and he still works on big steam hammer. About September, 1935, the claimant's classification was changed from hammersmith to blacksmith, and he has since been paid two rates, for example: In 1942, the hammersmith's rate for 218 days out of a total of 294 days worked and for the remaining 76 days the blacksmith's rate.

The claimant is the recognized regular hammersmith and performs all of the hammersmiths' work except when he is unavoidably absent.

The carrier has declined to reclassify the claimant and pay him the hammersmith rate continuously.

POSITION OF EMPLOYES: That the carrier has and is violating the following rules of our agreement:

RULE 12. When an employe is required to fill the place of another employe receiving a higher rate of pay, he shall receive the higher rate; but if he is required to fill temporarily the place of an employe receiving a lower rate, his rate will not be changed.

such work is performed by the blacksmith. The payroll classification of Jacobs has not been changed. He is never paid on a split rate. For these reasons, we believe Second Division, National Railroad Adjustment Board should deny this claim.

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 employees 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.

During the year 1942, by admission of the carrier, claimant Jacobs worked on the big steam hammer at Hornell on 210 days out of a total of 290 which he worked—or more than 70 per cent of the time. The claimant is unquestionably a hammersmith, as he had been recognized in the past, and should be so classified.

The carrier pays him the 25-cent differential for the full eight hours of each day when the big hammer is used, irrespective of the number of hours it is actually used, but pays him the blacksmiths' rate on days when the big hammer is not used.

The agreement provides no basis for this distinction. Rule 63 (d) specifies, without qualification, that "hammersmiths working on big steam hammers at Meadville and Hornell shall be paid twenty-five (25) cents per hour above the minimum rate paid blacksmiths." Continuous payment is required under this rule, at Hornell no less than at Meadville.

The violation in this case is a continuing one. Since the claim does not go back of October 23, 1942, the date of complaint, the delay in submitting protest does not bar the claim.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 25th day of October, 1943.