

Award No. 1156

Docket No. 1091

2-Wab.-FT-'46

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Sidney St. F. Thaxter when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION No. 13, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (FEDERATED TRADES)**

WABASH RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That Reclamation Plant Helper Morton Garver is entitled to be additionally compensated at the differential rate of 10¢ per hour, or 80¢ per day, for his services repairing brake beam struts on November 8, 9, 10, 21, 23, 24, 26, 27 and 28, 1945.

EMPLOYEES' STATEMENT OF FACTS: Merton Garver, hereinafter referred to as the claimant, is employed by the carrier in the reclamation plant at Decatur, Illinois, as a regular helper to perform helpers' work of all crafts. His seniority date is May 7, 1929, and his rate of pay during the period in question was 82¢ per hour.

On and subsequent to November 8, 1945, the reclamation plant shop foreman assigned the claimant to ream oblong holes in brake beam struts, and to apply new steel bushings in such reamed holes by the process of a power press, for which service this claimant was only paid his regular hourly rate.

A claim was made in favor of this claimant for the 10¢ differential rate, which has been handled in accordance with the terms of the current agreement rules up to and including the highest designated carrier officer to whom such matters are subject to appeal, with the result that such officer has declined to adjust this dispute.

POSITION OF EMPLOYEES: It is a fact that the work in question to which the claimant was assigned has been heretofore recognized as differential rated work, and paid for as such in accordance with the provisions of Rule 38(a), in pertinent part reading:

"Helpers qualified and performing the following work
dismantling, repairing and assembling angle and cut-out cocks
brake beams and other similar work brought to the Reclamation Plant, will be paid ten (10) cents per hour above the minimum rate paid helpers."

It is a further undisputable fact that this claimant was assigned to reaming oblong holes in brake beam struts, and to press new steel bushings

dismantle, assemble and test air, steam and water hose; reclamation of barrels, and any other similar work brought to the Reclamation Plant, will be paid the minimum hourly rate paid helpers.

(c) When helpers are not engaged in the work defined above, they will perform any work (except mechanic's work) to which they may be assigned.

(d) Employees in the Reclamation Plant will be permitted to use such new material as may be required in the manufacture or repairs of all classes of equipment handled.

(e) The seniority rosters for first class helpers, all crafts; regular helpers, all crafts; and carmen helpers, employed in the Reclamation Plant, will be merged effective March 1, 1943, and the employees now carried on each separate seniority roster will be shown on the combined seniority roster with the seniority date as shown on each respective roster dated January 1, 1942. The combined seniority roster will be known as the 'Reclamation Plant Seniority Roster for Helpers, All Crafts'."

POSITION OF CARRIER: The alleged dispute set up in the petitioner's ex parte statement of claim involves a request to change Rule 138 (b) of Supplement A effective March 1, 1943, to an extent whereby helpers in the reclamation plant would be paid ten (10) cents per hour above the minimum rate paid helpers when required to operate a drill press during the course of their tour of duty and, therefore, is not a dispute such as to fall within the purview of Section 3 (i) of the Railway Labor Act, as amended, and, accordingly, is not properly before or subject to a decision by the National Railroad Adjustment Board, Second Division.

SUBJECT TO AND WITHOUT WAIVING THE FOREGOING EXCEPTIONS, THE CARRIER MAKES THE FOLLOWING STATEMENT ON THE MERITS.

The alleged claim set up in the petitioner's ex parte statement of claim is without foundation under the provisions of Rule 138 of Supplement A effective March 1, 1943. As a matter of fact, paragraph (b) of that rule definitely provides that helpers operating a drill press will be paid therefor at the minimum hourly rate paid helpers; and that fact has heretofore been recognized by the representatives of the employees.

In that connection, attention is directed to the fact that, in the application of the rules involved, it has heretofore been the practice to compensate helpers in the reclamation plant when required to operate a drill press during the course of their tour of duty at the minimum hourly rate paid helpers; and that practice has been accepted by the representatives of the employees, as they have not heretofore contended that, when helpers are required to perform service such as performed by Helper Garver on the dates in question, such helpers should be paid ten (10) cents per hour above the minimum rate paid helpers.

When consideration is given to these facts, it is obvious that the alleged claim set up in the petitioner's ex parte statement of claim involves a request for a new rule and, therefore, the contention of the representatives of the employees should be dismissed and the claim 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 claimant did work repairing brake beams and is entitled to be paid the differential provided for in Rule 138 (a). The mere fact that as a part of the operation he used a drill press does not make the provisions of Rule 138 (b) applicable.

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, 1946.