

Award No. 1160

Docket No. 1076

2-Ga-MA-'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. 70, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (MACHINISTS)**

GEORGIA RAILROAD

DISPUTE: CLAIM OF EMPLOYEES: That the carrier is without authority to ex parte establish or maintain either a lead machinist or a gang leader under the current agreement, and that the assignment of Morgan Barton as either a lead machinist or a gang leader be abolished.

EMPLOYEES' STATEMENT OF FACTS: The agreement in effect between the Georgia Railroad and the employees of its mechanical department, represented through System Federation No. 70, Railway Employees' Department, American Federation of Labor, is dated August 1, 1944, and supersedes all former rules and agreements.

No provision is made in the aforesaid working agreement whereby positions of "Leadman" or "Gang Leader" may be established in the different crafts at any rate of pay.

Such positions have existed in the machinists' craft prior to and since the effective date of the current agreement. Morgan Barton of the machinists' craft is now holding a regular assignment of so-called "Lead Machinist" or "Gang Leader".

Morgan Barton regularly performs machinists' work in addition to regularly performing supervisory duties, by virtue of leading and directing the work of additional machinists, machinist helpers and apprentices, for which service he receives a differential rate of five (5) cents per hour above the rate established in Rule 118 for machinists.

POSITION OF EMPLOYEES: It is the position of the employees that the assignment of Morgan Barton does not come within the scope of the rules and rates of pay agreed upon for mechanical employees.

Rule 118 of the current agreement, quoted below, discloses the agreed upon minimum rates of pay for all of the different classes of mechanical employees:

Name	Craft	Amt. of Differential
H. C. Hunt	Car Inspector	5¢
E. T. Andrews	Triple Test Rack Operator	5¢
E. P. Loyal	Patternmaker	5¢
P. B. Bussey	Locomotive Crane Operator and Asst. Wreckmaster	7¢

Many of the assignments outlined above are of many years standing and in each case the payment of the differential is predicated on the assumption by the man of something more than routine journeyman's responsibility—either for his own specialty or for the work of others.

3. It may be that petitioners will refer to Rule 118—Rates of Pay. This rule, in listing rates of pay, reads:

“The following are the agreed to minimum rates of pay and constitute the least which will be paid to the various classifications of employes covered by this Agreement.”
(Underscoring ours.)

The purpose and the sole purpose of this particular verbiage was to legalize payment of rates higher than the minimum rates listed. Since such wording was not necessary to legalize the various differentials that are spelled out in the agreement, it follows that its purpose was necessarily to legalize payments of differentials such as the one paid to Machinist Barton.

4. Submitted herewith and marked carrier's Exhibit A is letter bearing date December 28, 1945, addressed to carrier's director of personnel, jointly signed by Local Chairman Sullivan and Master Mechanic Miller, certifying that during December, 1944, the question of this lead machinists' assignment at differential rate was the subject of conference between the master mechanic and the machinists' committee and that after the case had been handled with general chairman of machinists, Hendrix, and his approval secured, it was agreed that all objections to this assignment would be withdrawn if the assignment were bulletined and assigned to the senior bidder. This was done—the assignment being bulletined in master machanic's Bulletin No. 1046 of December 14, 1944, and assigned to the senior bidder, Machinist Morgan Barton, in master mechanic's Bulletin No. 1051 of December 20, 1944.

Copies of bulletins are submitted herewith, marked carrier's Exhibits B and C, respectively.

From the foregoing your Honorable Board will note that this lead machinist's assignment is not only proper and permissible under the agreement, and in line with carrier's general practices under the agreement, to which no other craft objects, but that the specific assignment objected to was in fact agreed to by the machinists' committee, and the grievance, if any, was settled in December, 1944.

Therefore, carrier respectfully requests your Honorable Board to 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 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 carrier claims the right to create from the class of employes covered by the agreement a lead man or gang leader and to pay him a higher rate of pay than the agreement provides for the members of the class. There is no rule which either expressly or by implication authorizes such procedure. The carrier relies on the fact that there is no rule which forbids it.

What the carrier has done here should be authorized by the agreement. If the agreement, if only by implication as was the case in Award 406, should recognize the practice as proper, we should not question the propriety of the carrier's action. But that is not the case. To permit the carrier by unilateral action to establish this new position at a higher rate of pay than is given to other members of the class is in effect inconsistent with the agreement as written. The result may be to "provide a leverage for taking away other advantages of the collective contract." See Award 1125.

In view of the negotiations which have in fact taken place between the representatives of the carrier and of the employes, the award in this case should have no retroactive effect. The management should, however, be ordered to desist from assigning any employe to a so-called lead position not authorized by the agreement which carries a higher rate of pay than is provided for other members of the class to which such employe belongs.

AWARD

Claim sustained as above conditioned.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 30th day of October, 1946.