Award No. 1306
Docket No. 1226
2-AT&SF-CM-'49

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Harold M. Gilden when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION No. 97, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. (Carmen)

THE ATCHISON, TOPEKA & SANTA FE RAILWAY SYSTEM

DISPUTE: CLAIM OF EMPLOYES: That under the current agreement Carman Wrecking Engineer E. G. Carpenter is entitled to be additionally compensated in the amount of four (4) cents per hour for all services performed as wrecking engineer since April 8, 1946, and that accordingly the carrier be ordered to so compensate this employe.

EMPLOYES' STATEMENT OF FACTS: At Waynoka, Oklahoma, the carrier maintains a wrecking outfit and a regularly assigned wrecking crew composed of Carmen A. L. Riley, K. A. Moore, V. F. Hinderliter, B. I. Gadberry, L. R. Keith and E. G. Carpenter, whose regularly assigned hours were from 7 A. M. to 12:00 noon, and 1 P. M. to 4 P. M. on the repair track, six days per week.

Carman E. G. Carpenter, hereinafter referred to as the claimant, since about January, 1931 to date, has served as the regularly assigned wrecker engineer, and for such service the claimant has been paid a differential rate of four cents per hour above the freight carmen's rate, until April 8, 1946.

On and since April 8, 1946, the carrier reduced this claimant's rate of pay four cents per hour applicable to all service he has been assigned to perform as wrecker engineer. The contention has been made that this reduction in pay of the claimant was improper and the carrier has declined to restore this differential rate to the claimant on the ground that he was not engaged in active service as a wrecker engineer on August 1, 1945.

The agreement effective August 1, 1945, as subsequently amended, is controlling.

POSITION OF EMPLOYES: There seems to be no dispute as to the pertinent facts involved in this case, that the claimant, both prior to August 1, 1945, and subsequent thereto, was the regularly assigned wrecker engineer, and for that class of service he was paid a differential rate of four cents per hour until April 8, 1946. This is affirmed by copy of the statement submitted, dated April 23, 1948, identified as Exhibit A, and which is substantiated by virtue of the fact that the claimant's rate of pay was arbitrarily reduced four cents per hour, effective April 8, 1946, by the carrier.

"Employes who, as of the effective date of the general agreement, are receiving a rate higher than that prescribed for the position occupied, will continue to be paid such higher rates so long as they remain on such positions. If and when they relinquish such positions, either temporarily or permanently, their successors will be paid only the rate prescribed by the general agreement."

It will be noted that in order to continue to receive a rate higher than that prescribed by the current agreement for the position occupied, an employe must (1) as of the effective date of the agreement be receiving the higher rate; (2) he must be occupying a position on which the higher rate has previously been established, and (3) he must remain on that position. The complainant employe in the instant dispute has fulfilled none of these conditions, i.e., (1) he was not receiving the higher rate on August 1, 1945, the effective date of the agreement, (2) he was not then occupying a position on which the higher rate had previously been established, and (3) he has not remained on any such position.

Carrier contends that Item 21 of Appendix B to the current agreement applies specifically and exclusively to employes who were, as of the effective date of that agreement, actually receiving a rate higher than that established by the new agreement, and that it had no application to an employe who had received a higher rate under the provisions of Rule 13 of the former agreement, quoted in the carrier's "Statement of Facts". That contention was clearly stated to the organization in conference and letters of September 30, 1947 and July 6, 1948, copies of which carrier submits as its Exhibits F and G, respectively.

The organization has made no attempt to deny the carrier's interpretation of Item 21 of Appendix B to the current agreement, but has devoted its efforts to an attempt to prove that the claimant, Mr. E. G. Carpenter, was regularly assigned and working as wrecker engineer at Waynoka on August 1, 1945. To date they have failed to furnish any documentary proof of such contention, nor has anything been offered that would refute the evidence submitted as carrier's Exhibit A, B, C, and D, showing the position to which the claimant was assigned and actually working on August 1, 1945, and the rate he was paid therefor.

The instant claim is not supported by the rule upon which the organization relies, and carrier respectfully requests that it be 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.

For purposes of the use of the wrecking outfit at Waynoka, Oklahoma, Carpenter, throughout the years, held the job of wrecker engineer. For such work prior to the new agreement he was paid the same 4 cents hourly differential as was uniformly applicable to all persons holding assignments to the wrecker engineer position. Nothing happened to his work status, prior to August 1, 1945, to dispute his right to continue on that assignment. In fact, on August 4, only three days after the effective date of the current agreement, he was again called upon to serve as the wrecker engineer.

The intent and purpose of Item 21 of Appendix B is to preserve to incumbent wrecker engineers the wage differential previously enjoyed by them. The language of the provisions does not make eligibility for benefits dependent either on a full time assignment to the job or on work performance in the particular classification on August 1, 1945. The use of the phrase "if and

when they relinquish such positions" makes it clear that the over-rate would be eliminated only with respect to those persons who were assigned to the job after the effective date of the agreement. Parker established his claim to the work of wrecker engineer at Waynoka long before August 1, 1945.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 7th day of March, 1949.