Award No. 4391
Docket No. 4213
2-GN-CM-'64

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 101, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. - C. I. O. (Carmen)

GREAT NORTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the current agreement was violated when the carrier failed to compensate Wrecking Engineer Roy Anderson the six cents per hour differential when operating welding machines.

2. That, accordingly, the carrier be ordered to compensate Wrecking Engineer Roy Anderson an additional six cents an hour for each hour spent welding from August 29, 1960.

EMPLOYES' STATEMENT OF FACTS: The Great Northern Railway Company, hereinafter referred to as the carrier, employs Roy Anderson, hereinafter referred to as the claimant, as wrecking engineer at Superior, Wisconsin, with assigned hours of duty from 7:30 A. M. to 4:00 P. M. — thirty minutes for lunch — Monday through Friday.

When not away from the shop at a wreck, he is usually assigned to perform welding work in the shop area, but is not paid the six cents an hour differential for welding.

The claimant is the wrecking engineer, and has a pay rate accordingly, as is set forth in Rule 85 (a) of the controlling collective bargaining agreement. His regular hourly rate of pay at the time this dispute occurred was $2.666 per hour.

This dispute was handled with all carrier officers authorized to handle disputes, including the highest designated officer, with the result that he too declined to adjust it.

The agreement effective September 1, 1949, as subsequently amended, is controlling.

POSITION OF EMPLOYES: It is the position of the employes that the claimant, who is the carrier's regularly assigned wrecking engineer, under the

" 'The Railway Labor Act did not design that proceedings before the several divisions of the Adjustment Board should be technical but some actual proof besides uncorroborated statements which have been denied at least by implication in contrary statements is necessary to assist the Board in a proper decision. * * *' "

As this Board held in **Award No. 1468,** Carmen v. I.C., Referee Edward F. **Carter:**

"Any extension of the scope of the application of the differential must come from negotiation and not by an interpretation which could only have the effect of revising the Agreement, a function this Board does not possess."

THE CLAIM OF THE ORGANIZATION, THEREFORE, IS WITHOUT MERIT FOR THE FOLLOWING REASONS:

1. Rule 47 clearly provides that the welding differential applies only "over the mechanic's basic rate in such craft or class."

2. When the language in rule 47 is all given effect and its common and ordinary meaning, it is clear that the welding differential is to be added only to the basic rate for freight carmen mechanics—not the total hourly earnings being paid to a particular individual under rules other than rule 99.

3. The organization has offered no evidence to carry its burden of proving its contention in this case.

4. The organization is requesting this Board to exceed its legal jurisdiction by extending the application of rule 47.

For the foregoing reasons, the carrier respectfully requests that the claim of the employes 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.

Parties to said dispute were given due notice of hearing thereon.

The claimant, Roy Anderson, is employed by the Carrier as a freight carman at Superior, Wisconsin, additionally he is assigned as a wrecking engineer. The facts show that while he is not at wreck scenes he usually is assigned to perform welding work in the shop area.

The carrier is compensating claimant basically as a freight carman and has added to the freight carman rate, the differential provided for in Rule 85 (a), which says:

"Rule 85 (a) Differentials.

Wrecking engineers. Seven and two-tenths cents (7.2c) per hour above freight carmen's basic rate.

(b) Tankmen, which also includes applying couplings and connecting locomotives and tenders; applying wooden pilots and beams, locomotive tender draft rigging and brake rigging work. Three and six-tenths (3.6c) per hour above freight carmen's rate of pay.

(c) All pattern makers. Eight and four-tenths cents (8.4c) per hour above passenger carmen's rate."

The Employes allege that claimant should also be receiving an additional differential of six cents per hour because of the provisions found in Rule 47, which are:

"Rule 47. Welding Differential.

Oxyacetylene, thermit, and electric welding machine operators in all crafts will be paid six (6) cents per hour over the mechanic's basic rate in such craft and class."

The Organization contends that Award No. 1374 is analogous and that differentials can be cumulative and therefore the claim of Carman Anderson should be sustained. The language of the agreement that was interpreted in Award No. 1374 is not the same as that which is found in the agreement which is before us in the instant case. Here we have no plain provisions within the agreement that allow cumulative differentials and no language was shown to or found by us, which allows us to draw an inference that the parties intended to provide for cumulative differentials.

In the absence of plain language within an agreement to show the intent of the parties it is necessary that we look to the acts and declarations of the parties to arrive at their intent. The facts herein disclose that the applicable agreement has been effective since September 1, 1949, and that subsequent to that date the former local chairman of the organization was intimately acquainted with an identical situation which lasted for an extended period and yet he filed no claim against the carrier nor did he make any other effort to collect each of the differentials being sought herein. We are of the opinion that the acts of the parties show that their intent was to pay the wrecking engineer only the differential provided for in Rule 85 (a) even though he sometimes did welding work. For the reasons stated the claim of the organization must be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 5th day of February, 1964.