

The Second Division consisted of the regular members and in addition Referee Nicholas H. Zumas when award was rendered.

Parties to Dispute: (International Association of Machinists and
(Aerospace Workers
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(Clinchfield Railroad Company

Dispute: Claim of Employees:

1. That under the terms of the Agreement, the following Machinists, R. Higgins, H. Blevins, J. D. Kniceley and Q. B. Briggs, were improperly denied the six (6) cents per hour above the minimum rate paid Machinists performing the work of inspection of locomotives.
2. That accordingly, the Clinchfield Railroad Company be ordered to additionally compensate Machinists R. Higgins, H. Blevins, J. D. Kniceley and Q. B. Briggs in the amount of six (6) cents per hour, beginning on the date of March 20, 1973 and continuing thereafter for all hours of their work assignments.

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 waived right of appearance at hearing thereon.

Prior to October 1, 1972, the Federal Railroad Administration required Carrier to prepare and file a locomotive inspection report on each unit every 30 days. The regulations required that:

"The report shall be prepared on a good grade of pale blue paper, 6 x 9 inches, and subscribed and sworn to, before an officer authorized to administer oaths, by the inspectors who made the inspection, and by the officer in charge."

Consistent with the above-quoted regulation, Rule 36, Differentials, was in effect on this property, providing in pertinent part, as follows:

"At points and on shifts where there are ordinarily fifteen (15) or more engines tested and inspected each month, and machinists are required to swear to Federal reports covering such inspection, a machinist will be assigned to handle this work in connection with other machinist's work and will be allowed six (6) cents per hour above the machinist's minimum rate at the point employed.

"At points or on shifts where no inspector is assigned and machinists are required to inspect engines and swear to Federal reports, they will be paid six (6) cents per hour above the machinist's minimum rate at the point employed for the days on which such inspections are made." (Underscoring added).

Subsequent to October 1, 1972 there was a change. The 30 day reporting period was changed to every six months and new FRA Form F-6180-49 was issued for use. Inspectors were no longer required to swear to the fact that inspections were made, but rather were only required to sign the form to attest to the fact that the items were inspected.

While there was no requirement to swear as to the accuracy of the inspection, the new form warned that:

"A false entry on this form is punishable by fine or imprisonment (U. S. Code, Title 18, Sec. 1001)."*/

*/ Title 18, Sec. 1001 provides:

"Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than \$10,000 or imprisoned not more than five years, or both. June 25, 1948, c. 645, 62 Stat. 749."

Carrier takes the position that the Rule 36 is not applicable because inspectors are not required to swear but only to sign, and that the reason for allowing the 6¢ differential was the responsibility of having to take an oath as to the accuracy of an inspection on a Federal report. In its Rebuttal, Carrier states: "In other words, the differential is paid for his assumption of responsibility." Carrier further argues that it is necessary to strictly construe the rule, and differentiate the difference between the words sign and swear, and that: "The ordinary meaning of the word 'sign' is to affix a signature."

Implicit in the position of Carrier is that the swearing requirement carries a greater criminal sanction for failure to accurately report the results of a locomotive inspection than merely affixing a signature to the effect that the parts and appurtenances of the locomotive unit have been inspected, and that all defects disclosed by the inspection were properly repaired.

The Board disagrees. Despite the fact that an inspector is no longer required to swear, the responsibilities imposed for signing are as great or greater as those previously imposed for swearing. As indicated above, the penalty for a false entry under Federal law on the new form is up to \$10,000 and up to five years in prison. This clearly justifies the continuation of the 6¢ differential.

Support for the Board's position is found in Award No. 1 of Public Law Board No. 1197, involving an identical problem. Even though a different rationale was the basis for the sustaining award, that Board concluded:


"The substantive duties and the responsibility of the employee are essentially the same under the new procedure as they were under the procedure prior to October 1, 1972. The procedural change promulgated by the FRA has not changed this. The employees in question are still required to inspect locomotives and sign Federal forms relative thereto and for this, they are allowed the 6¢ per hour differential provided for in their respective Agreements."

A W A R D

The claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 16th day of May, 1975.

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JUN 6 - 1975

G. M. YOUHN

DISSENT OF CARRIER MEMBERS
TO
AWARD 6863, DOCKET 6697

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Noted
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Award 6863 is, in our opinion, in serious error and not supported by the Agreement Rule relied upon.

Rule 36 - Differentials for Machinists - is quoted in the Award. The rule provides for differential for machinists "required to swear to Federal reports covering such inspections". When the machinists were relieved of swearing to the reports, the basis for the differential ceased to exist.

The record before the Board showed that the differential rule had its origin in the National Agreement between the United States Railroad Administration and the employees represented by the Railway Employees' Department of the American Federation of Labor effective October 20, 1919. The Committee authorized to interpret the Agreement of October 20, 1919, on at least two occasions, February 18, 1920, and March 12, 1920, advised that the rule applied "only to machinists who are required to swear to reports required by the Federal inspection laws." The rule has the same meaning today.

It is well settled by Awards of all Divisions of the National Railroad Adjustment Board that the Board must apply Agreements as written, and may not, through the guise of interpretation, add to, subtract from or alter an existing Agreement; and further, that if the rule does not accomplish the purpose intended, the remedy lies not with this Board, but in the field of negotiation.

The Petitioner's demand that the differential be applied to inspectors who sign the new Federal form, and are no longer required to swear to the report, was, in reality a demand for a rule change, subject to negotiation.

For the foregoing reasons, we dissent.

P. C. Carter
W. B. Jones
G. M. Youhn
H. M. Brinkwood
J. J. Taylor