

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

Parties to Dispute: (System Federation No. 114, Railway Employees'
 (Department, A. F. of L. - C. I. O.
 ((Firemen & Oilers)
 (Southern Pacific Transportation Company

Dispute: Claim of Employees:

1. That under the provisions of Rule 20 of the Controlling Agreement, Firemen and Oiler B. E. Summers, was improperly paid since July 19, 1977, continuously until this matter be settle with the Management. The above listed employee hereinafter referred to as Claimant, was denied reimbursement for the difference of pay between Laborer's rate of pay and Tractor Operator's rate of pay.
2. That accordingly, the Carrier be order to:

 Pay the aforesaid employee the difference between the Laborer's rate of pay and Tractor Operator's rate of pay; since July 19, 1977, until this matter be settle with the Carrier.

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.

The claim before us asserts that Claimant should be paid at the higher, tractor operator rate of pay in accordance with the provisions of Rule 20. It argues that since Claimant was a laborer, he was entitled to the higher rates of pay, when he was required to operate a tractor, consistent with the various provisions of this Rule.

Before discussing the merits of this claim, we must carefully review Carrier's procedural arguments that the claim is both untimely and improperly before us since it was not discussed on the property in contravention of Circular 1. Admittedly, it is true as Carrier contends, that if the claim is predicated on certain actions crystalizing on a certain date, such a claim if presented, would not be a continuing claim, but a continuation of the contract violation which occurred on a certain date when certain action was taken. But we are unable to discern from Carrier's fact presentation that this is what actually happened and consequently we cannot conclude that the claim is estopped by the time limits. On the contrary, it appears that

from the evidence adduced by the organization, they do not allege that this matter occurred daily, but only intermittently.

Correlatively, we do not find substance to the parallel allegation that the General Chairman failed to follow up and conduct a conference, after he requested it. His letter dated March 2, 1978 and identified in the record as employees' exhibit F verifies that such a written request was made. Further, the organization states that a conference was held on August 2, 1978 on this claim and two other claims but Carrier did not confirm the conference (following the initial and timely declination of the claim earlier) of this case - only another of the claims that was discussed and similar in nature. From this development, we have a classic confrontation of evidence and assertions - with both sides proffering supportable and unsupportable allegations. If, from the record we could categorically prove that the claim was not conferenced, then we would have no alternative, under the facts and circumstances herein other than to dismiss it. (See Third Division Award 21440, et al on this point.) But we cannot reach this conclusion. At best, we have a vivid example of "assumptional handling" by both parties and we suggest to them that communications improve to obviate any future misunderstandings.

Turning to the merits of this dispute, we again find an incomplete record. Carrier asserts that Claimant was not required to operate tractors in the performance of his duties, while the organization appears to allege that he was if he were to perform his job efficiently. As this inconclusive record stands, it is strikingly similar to the facts and record in Award 8215 between the same parties, where the issue of whether an employee was required to operate a tractor in the discharge of his duties was posed. We reiterate in this decision that our function as an appellate review body is not to establish rates of pay, which is properly the subject of collective bargaining or to direct management how to define work and insure its completion by employees.

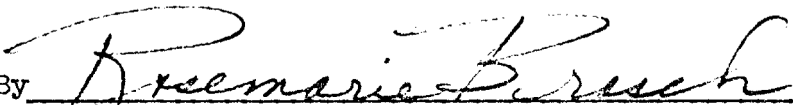
It may be that an employee may perform his duties three times as efficiently with the use of a tractor than by hand - but - if management does not direct him, or require him to use the tractor in the discharge of his duties, we have no statutory authority to impose such a condition upon the Carrier absent an agreement or understanding to that effect between the carrier and the union. Similarly, in the operation and application of Rule 20, payment of employees at the higher rates is conditioned upon the fact that employees be "required" to perform the duties of the higher rated position. Thus, following the lead in our Award 8215, we are remanding this case to the parties, relying on their good faith, for a settlement in accordance with Rule 20. If the evidence shows that Claimant was not required to perform the duties of a higher rated position during the claim period, but did so of his own volition, this claim would have to be denied - even if by Claimant's actions, in using the tractor, he accomplished much more work. It may be that management is pennywise and pound foolish in not requiring him to use the tractor - but that is their prerogative and not ours. On the other hand, if management directed or approved of his use of the tractor during the claim period, then the claim would be valid for those dates when he performed service, under Rule 20, which would entitle him to the higher rate of pay. We will retain jurisdiction in the event the parties are unable to dispose of the claim as indicated above.

A W A R D

Claim remanded to the parties in accordance with the above findings.

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 January 1980.