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**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13796

Docket No. 13660

04-2-02-2-20

The Second Division consisted of the regular members and in addition Referee Carol J. Zamperini when award was rendered.

(International Brotherhood of Electrical Workers

PARTIES TO DISPUTE: (

(The Burlington Northern and Santa Fe Railway Company

STATEMENT OF CLAIM:

- “1. That in violation of the current Agreement, Rules 12, 26, 98 and Appendix “A” in particular, the Carrier failed to compensate Electrician Helper Jackie DeFrates at the proper rate of pay while temporarily assigned to operate a minus forty (-40) ton overhead crane.
2. That, accordingly, the Burlington Northern and Santa Fe Railway Company be directed to compensate Electrician Helper Jackie DeFrates at the minus forty (-40) ton Crane Operator rate of pay for all hours temporarily assigned by 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 employee or employees involved in this dispute are respectively carrier and employee 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 is employed in the Mechanical Department of the Burlington Northern and Santa Fe Railway Company (Carrier), as an Electrician Helper. According to the Organization's Submission, she operates a large Proceco washing machine. However, during the week of December 18, 2000, she was assigned to operate an under 40-ton overhead electric traveling crane to load and unload locomotive component parts into and out of the washing machine. The Organization claims that prior to this dispute the Claimant was compensated at the minus 40-ton Crane Operators' rate of pay any time she was asked to operate the crane.

The Organization argues that the Carrier failed to compensate the Claimant for operating the overhead crane for the time she was assigned the job. They cite Rule 12, Composite Service, which requires that when an employee is assigned a position with a higher rate of pay for less than four hours in one day he will be paid the higher rate of pay for all time expended on the higher rated position with a minimum of one hour of pay.

The Organization rejects the Carrier's attempt to use the abolishment of a number of full-time bid Crane Operator positions in October 1999, as a defense for its actions. It points out there are still four full-time Crane Operators at that facility. It contends that these employees continued to operate the cranes via radio control rather than from the cab until early December 1999, when the Carrier turned over the operation of the cranes to all shop craft personnel. Further, it argues that beginning in December 1999, the Claimant was required to retrieve and deliver component parts to various areas once they were washed. It contends the Crane Operator position is paid at a higher rate and Rule 12 requires that the Claimant who performed the duties of that position be paid at the higher rate. It discounts any assertion by the Carrier that there are no longer Crane Operator positions at the facility.

The Organization also cites Rule 79, Section (b) of the Agreement as an indication that even when a position does not exist, an employee will be paid the higher rate for performing the duties of that position. It argues the Claimant's situation is no different than that described in Rule 79. It also maintains the

abolishment of the nine Crane Operator positions does not alleviate the Carrier's obligation to pay the higher rate of pay when the applicable duties are performed by an Electrician Helper. It further argues that even an employee who volunteers to work a higher paid position does not waive the right to the higher rate of pay. It contends the employee is still assigned to the position by the Carrier. In the instant claim, the Organization insists it is the Carrier who has assigned the crane duties to the Claimant. They reference Second Division Award 73 in support of their contention.

The Organization also dismisses any procedural complaints raised by the Carrier as unsupported and without merit. It contends the claim was timely and properly filed. It says all matters presented in its Submission have been the subject of correspondence or conference.

The Carrier argues that this case has been brought by the Organization as a result of its decision to eliminate several Crane Operator positions at the West Burlington facility in October 1999, and convert the overhead operation of the cranes to remote control operation. It points out the overhead operation was originally assigned to Electricians. When remote control operation was implemented, the positions of the Electricians who operated the cranes from overhead were dispensable. The change to remote control operation allowed the crane operator duties to be assigned to the employees changing parts on locomotives or moving parts to be cleaned. It contends that the simple task of operating a crane was incidental to parts cleaning and assigned to the craftsman actually performing the work of cleaning the locomotive parts.

The Carrier further argues that the Organization initially claimed the Helper was due overtime. However, in the appeal of that claim, it asserted that the Organization claimed the differential rate of pay between Helper Class rate of pay and Crane Operator rate of pay. The Carrier disputes the existence of a differential paid to Helpers who operate the crane. It says the rates of the two positions are merely different rates. It insists there is no Rule that requires that Helpers be paid at any rate of pay other than that is regularly paid the position. Furthermore, it insists the Organization failed to present any evidence that such a rule requires pay at the higher rate. The Carrier contends Rule 12 merely requires that a higher rate of pay be paid if an employee is assigned to a position that has a higher rate. It

rejects the idea that the Claimant in this case was assigned to another "position." The Carrier says the Rule does not require pay at the higher rate when an employee performs tasks associated with another position. It argues Rule 12 only applies if the Claimant is assigned to a Crane Operator position. The Carrier asserts that the operation of the crane was incidental to cleaning and other duties performed by the Claimant in her regular position.

The Carrier illustrates the difference between a position that has a rate with a differential and a position that does not have a differential. In doing so, it emphasizes that employees are not paid a differential for operating cranes unless they are assigned to full time crane operator positions. Additionally, it points out that there are no full time crane operator positions at West Burlington. Therefore, there was no position for the Claimant to fill.

The Carrier also insists the Organization never discussed the "crane operator differential" during contract negotiations. Therefore, it maintains that the Organization is merely seeking to attain something through arbitration that it did not secure at the bargaining table.

The Carrier also claims the Organization committed procedural errors in handling this claim. First, the Carrier says the Organization did not file the claim in a timely manner. Secondly, the Carrier argues that the claim was modified when appealed. Therefore, the claim before the Board was never appealed to the highest designated officer as required by Rule 34(a).

The Board considered the arguments raised by both parties in their Submissions. It is apparent that the work performed by the Claimant was incidental to her regular assignment. At no time was she assigned to the Crane Operator position. Therefore, absent proof to the contrary, the Board does not believe the cited Rule is applicable in this case. In addition, there is no evidence the Claimant was previously paid a "differential" when she or any other Helper operated a crane during their normal course of duties. Moreover, there is no evidence that the parties ever intended a differential to be paid to an Electrician's Helper for performing tasks which had been part and parcel of the Crane Operator's assignments.

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AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 27th day of April 2004.