

Award No. 752
Docket No. 667
2-D&RGW-CM-'42

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee R. F. Mitchell when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 10, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (CARMEN)

THE DENVER AND RIO GRANDE WESTERN RAILROAD
COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That effective November 15, 1940, and retroactive to September 15, 1940, the carrier reduced the monthly salaried positions maintained and paid carmen employed at Cumbres Pass, Fir Pass, Marshall Pass, Pando and LaVeta, Colorado, in violation of current agreement and Section 6 of the Railway Labor Act, as amended June 21, 1934, and that these monthly salaried positions be restored retroactive to September 15, 1940.

EMPLOYEES' STATEMENT OF FACTS: That the carrier employs one (1) carman at Cumbres Pass, one (1) carman at Fir Pass, two (2) carmen at Marshall Pass, two (2) carmen at Pando and one (1) carman at LaVeta, Colorado.

That on November 15, 1940, under the current wage schedule, effective September 15, 1940, and for several years prior thereto under previous agreements and wage schedules, the carrier maintained monthly salaries on the basis of points which were paid to any carman employed at such points. These points and salaries follow:—

Points	Monthly Salaries
Cumbres Pass, Colorado.	\$194.33
Fir Pass, “	\$194.33
Marshall Pass, “	\$194.33
Pando, “	\$209.33
LaVeta, “	\$219.00

The sub-normal weather conditions and duty responsibilities under which these carmen were compelled to labor at times, were factors which merited the establishment of these monthly salaried positions at these particular points. The salaries established for these points have always been in excess of the minimum rates established and paid carmen which were permitted and legalized under Rule 13 of the previous agreement and under Rule 12 of the current agreement, effective September 1, 1940.

That the carrier did, effective November 16, 1940, and retroactive to September 15, 1940, reduce these monthly salaried positions as follows:

The rate at Chama when this job was created was \$165.47 per month and was based on 68¢ per hour.

The jobs at Bond were created June 16, 1934, at \$165.00 per month which is the equivalent of approximately 68¢ per hour.

The car inspectors at Thistle were placed on a monthly rate of \$165.00 per month July 1, 1932, which rate was based on 68¢ per hour.

The jobs at Chama, Bond and Thistle were treated to an increase in pay of \$12.17 per month, effective August 1, 1937.

It will be noted from the history of these monthly rates that there was no basic hourly rate used in determining the rates—this for the reason as heretofore stated, we had no basic hourly rate of pay for mechanics.

It was the intention of the carrier not to disturb these monthly rates for car inspectors when the Mediation Agreement, Case A-797, became effective September 16, 1940, for the reason that while the rates at Bond, Chama and Thistle were somewhat lower than the formula set forth in Rule 12 for determining monthly rates provides, the rates were higher than provided by the rule at La Veta, Fir, Cumbres, Marshall Pass, Tennessee Pass and Pando. However, on October 21 and November 4, 1940, the organization protested our failure to increase the monthly rates at Bond and Thistle under the provisions of Rule 12 on the basis of the rate of 77¢ per hour, the rate agreed to for freight carmen in the Mediation Agreement.

As result of this protest, the rates at Bond, Chama and Thistle were increased to \$187.36 per month, effective September 16, 1940, under the provisions of Rule 12 and likewise, the rates at La Veta, Fir, Cumbres, Marshall Pass, Tennessee Pass and Pando were reduced to \$187.36 per month in accordance with the provisions of this rule.

It will be observed that the Mediation Agreement reads in part:

“* * * All existing hourly rates of pay shall be adjusted upward or downward effective as of September 16, 1940 to conform to the following * * *” (Emphasis ours.)

Under the provisions of this feature of the agreement, due to the many different and varied rates paid mechanics and helpers, approximately 300 shop employees had their rates of pay reduced while approximately 1800 had their pay increased.

The carrier contends that if the carmen at Bond and Thistle were under the provisions of the Mediation Agreement and Rule 12, entitled to an upward adjustment in pay, and the carrier agrees they were, then by the same token under the same Mediation Agreement and rule, it had the right to adjust downward the rates at La Veta, Fir, Cumbres, Marshall Pass, Tennessee Pass and Pando which were in excess of the monthly salary arrived at by dividing the total earnings of 2920 hours times 77¢ by twelve.

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.

The facts in this case are very much in dispute and the case is remanded to the parties with direction to make a joint check to ascertain, first, whether there are any abnormal working conditions which justify higher pay for

workmen of this class at this point than at other places on the road, and second, the actual amount of work performed by these men. Nothing herein is to be considered as passing on the question of the rate of pay.

The right is reserved to the parties if they desire to resubmit this case to this Board.

AWARD

Claim remanded with instructions to make the joint check as set out in the findings and with the privilege to resubmit the case if desired.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 20th day of April, 1942.