

Award No. 1160

Docket No. 1076

2-Ga-MA-'46

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Sidney St. F. Thaxter when award was rendered.

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**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION No. 70, RAILWAY EMPLOYES'  
DEPARTMENT, A. F. OF L. (MACHINISTS)**

**GEORGIA RAILROAD**

**DISPUTE: CLAIM OF EMPLOYES:** That the carrier is without authority to ex parte establish or maintain either a lead machinist or a gang leader under the current agreement, and that the assignment of Morgan Barton as either a lead machinist or a gang leader be abolished.

**EMPLOYES' STATEMENT OF FACTS:** The agreement in effect between the Georgia Railroad and the employes of its mechanical department, represented through System Federation No. 70, Railway Employes' Department, American Federation of Labor, is dated August 1, 1944, and supersedes all former rules and agreements.

No provision is made in the aforesaid working agreement whereby positions of "Leadman" or "Gang Leader" may be established in the different crafts at any rate of pay.

Such positions have existed in the machinists' craft prior to and since the effective date of the current agreement. Morgan Barton of the machinists' craft is now holding a regular assignment of so-called "Lead Machinist" or "Gang Leader".

Morgan Barton regularly performs machinists' work in addition to regularly performing supervisory duties, by virtue of leading and directing the work of additional machinists, machinist helpers and apprentices, for which service he receives a differential rate of five (5) cents per hour above the rate established in Rule 118 for machinists.

**POSITION OF EMPLOYES:** It is the position of the employes that the assignment of Morgan Barton does not come within the scope of the rules and rates of pay agreed upon for mechanical employes.

Rule 118 of the current agreement, quoted below, discloses the agreed upon minimum rates of pay for all of the different classes of mechanical employes:

Name	Craft	Amt. of Differential
H. C. Hunt	Car Inspector	5¢
E. T. Andrews	Triple Test Rack Operator	5¢
E. P. Loyal	Patternmaker	5¢
P. B. Bussey	Locomotive Crane Operator and Asst. Wreckmaster	7¢

Many of the assignments outlined above are of many years standing and in each case the payment of the differential is predicated on the assumption by the man of something more than routine journeyman's responsibility—either for his own specialty or for the work of others.

3. It may be that petitioners will refer to Rule 118—Rates of Pay. This rule, in listing rates of pay, reads:

“The following are the agreed to minimum rates of pay and constitute the least which will be paid to the various classifications of employees covered by this Agreement.”  
(Underscoring ours.)

The purpose and the sole purpose of this particular verbiage was to legalize payment of rates higher than the minimum rates listed. Since such wording was not necessary to legalize the various differentials that are spelled out in the agreement, it follows that its purpose was necessarily to legalize payments of differentials such as the one paid to Machinist Barton.

4. Submitted herewith and marked carrier's Exhibit A is letter bearing date December 28, 1945, addressed to carrier's director of personnel, jointly signed by Local Chairman Sullivan and Master Mechanic Miller, certifying that during December, 1944, the question of this lead machinists' assignment at differential rate was the subject of conference between the master mechanic and the machinists' committee and that after the case had been handled with general chairman of machinists, Hendrix, and his approval secured, it was agreed that all objections to this assignment would be withdrawn if the assignment were bulletined and assigned to the senior bidder. This was done—the assignment being bulletined in master machanic's Bulletin No. 1046 of December 14, 1944, and assigned to the senior bidder, Machinist Morgan Barton, in master mechanic's Bulletin No. 1051 of December 20, 1944.

Copies of bulletins are submitted herewith, marked carrier's Exhibits B and C, respectively.

From the foregoing your Honorable Board will note that this lead machinist's assignment is not only proper and permissible under the agreement, and in line with carrier's general practices under the agreement, to which no other craft objects, but that the specific assignment objected to was in fact agreed to by the machinists' committee, and the grievance, if any, was settled in December, 1944.

Therefore, carrier respectfully requests your Honorable Board to deny this claim.

**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 carrier claims the right to create from the class of employes covered by the agreement a lead man or gang leader and to pay him a higher rate of pay than the agreement provides for the members of the class. There is no rule which either expressly or by implication authorizes such procedure. The carrier relies on the fact that there is no rule which forbids it.

What the carrier has done here should be authorized by the agreement. If the agreement, if only by implication as was the case in Award 406, should recognize the practice as proper, we should not question the propriety of the carrier's action. But that is not the case. To permit the carrier by unilateral action to establish this new position at a higher rate of pay than is given to other members of the class is in effect inconsistent with the agreement as written. The result may be to "provide a leverage for taking away other advantages of the collective contract." See Award 1125.

In view of the negotiations which have in fact taken place between the representatives of the carrier and of the employes, the award in this case should have no retroactive effect. The management should, however, be ordered to desist from assigning any employe to a so-called lead position not authorized by the agreement which carries a higher rate of pay than is provided for other members of the class to which such employe belongs.

#### AWARD

Claim sustained as above conditioned.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

ATTEST: J. L. Mindling  
Secretary

Dated at Chicago, Illinois, this 30th day of October, 1946.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
**SECOND DIVISION**

(The Second Division consisted of the regular members and in addition Referee Sidney St. F. Thaxter when the interpretation was rendered.)

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**INTERPRETATION NO. 1 TO AWARD NO. 1160**  
**DOCKET NO. 1076**

**NAME OF ORGANIZATION:** Railway Employes' Department, A. F. of L.  
(Machinists).

**NAME OF CARRIER:** Georgia Railroad.

Upon application jointly submitted by the carrier and the representatives of the employes involved in the above award, that this Division interpret the same in the light of the dispute between the parties as to its meaning, as provided for in Sec. 3, First (m) of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

The essential part of the findings on which the award is based read as follows:

"The carrier claims the right to create from the class of employes covered by the agreement a lead man or gang leader and to pay him a higher rate of pay than the agreement provides for the members of the class. There is no rule which either expressly or by implication authorizes such procedure. The carrier relies on the fact that there is no rule which forbids it.

What the carrier has done here should be authorized by the agreement. If the agreement, if only by implication as was the case in Award 406, should recognize the practice as proper, we should not question the propriety of the carrier's action. But that is not the case. To permit the carrier by unilateral action to establish this new position at a higher rate of pay than is given to other members of the class is in effect inconsistent with the agreement as written. The result may be to 'provide a leverage for taking away other advantages of the collective contract.' See Award 1125.

In view of the negotiations which have in fact taken place between the representatives of the carrier and of the employes, the award in this case should have no retroactive effect. The management should, however, be ordered to desist from assigning any employe to a so-called lead position not authorized by the agreement which carries a higher rate of pay than is provided for other members of the class to which such employe belongs."

**The carrier construes the Award as follows:**

"1. That the carrier is precluded under the Award and agreement from arbitrarily establishing a position of leadman or gang leader on or after November 14, 1946.

2. That, in view of what is said in the first sentence of the last paragraph of the Findings, the position in question (held by Morgan Barton) may be continued in effect.

3. That the carrier is otherwise estopped from establishing and/or maintaining such positions in the future."

**The employes construe the Award as follows:**

"1. That the carrier is to desist from assigning any employe to a so-called lead position on or after November 14, 1946.

2. That the carrier would make no deduction from the wages already paid to any employe, or from the wages due any employe filling a so-called lead position prior to November 14, 1946.

3. That the carrier is obligated under the Award and agreement to have discontinued such assignments and rate of pay applicable thereto, including the position in question, on or before November 14, 1946.

With respect to the contents of the concluding paragraph of the Findings of the Board, around which existing differences center, the employes hold that the continuance of Morgan Barton as a leadman constitutes a breach of the intent and purpose of the Findings of the Board as a whole. The contention of the employes respecting discontinuance of lead assignments is duly considerate of the language contained in the last sentence of the last paragraph of the Findings of the Board. They hold that, according to same, the words 'Desist from Assigning', also mean 'Desist from Paying' the rate made applicable to such assignments following November 14, 1946."

**INTERPRETATION**

It was the intent of the award that the management should, from the applicable date of the award, cease to continue the assignment of Morgan Barton in the so-called lead position or to give to him a rate of pay not applicable to his regular position.

The order that the award should have no retroactive effect had reference only to payment of wages which may have been made prior to the effective date of the award. It was not intended that payment made to that date should be refunded.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
By Order of Second Division

**ATTEST: J. L. Mindling**  
Secretary

Dated at Chicago, Illinois, this 24th day of February, 1947.