

Award No. 1166

Docket No. 1084

2-DL&W-CM-'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.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION No. 78, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (CARMEN)**

**THE DELAWARE, LACKAWANNA AND WESTERN
RAILROAD COMPANY**

DISPUTE: CLAIM OF EMPLOYEES: That Freight Carman Welder Cloyd Beaver claims he is entitled to be—

(a) Reimbursed in the amount of \$13.50, deducted from the wages which he received for welding passenger equipment during June, July and August, 1945.

(b) Additionally compensated at the difference between his rate of \$1.05 per hour and passenger carmen welders' rate of \$1.10 per hour, for all passenger equipment welding he has performed on and since September 1, 1945.

EMPLOYEES' STATEMENT OF FACTS: The carrier has regularly employed Cloyd Beaver, hereinafter referred to as the claimant, at Keyser Valley, Pennsylvania, shops, since May 1, 1945, as a freight carman welder at the rate of \$1.05 per hour. In the meanwhile, however, the claimant has been frequently required to perform welding on passenger equipment, and for this service he was paid the passenger carmen welders' rate of \$1.10 per hour, up until about September 1.

Effective September 1, 1945, the carrier ceased paying the claimant the rate of \$1.10 per hour for the service which he was required to perform in connection with welding passenger equipment, and on or about September 8, the carrier deducted \$13.50 from the wages of this claimant for the passenger equipment welding work he had performed for which he was paid the rate of \$1.10 per hour during the months of June, July and August 1945.

The grievance of this claimant has been handled in accordance with the terms of the current agreement, effective November 1, 1935, up to and including the highest designated carrier officer to whom such matters are subject to appeal, and settlement thereof has failed for the reasons stated by this carrier officer in the submitted copy of letter dated November 9, 1945, addressed to the undersigned by Mr. Ray, identified as Exhibit A.

POSITION OF EMPLOYEES: It is a fact that the rate of pay of freight carmen is 98 cents per hour, and that the rate of pay of passenger carmen

very dangerous practice in labor disputes to permit oral agreements to affect the terms of a written contract. The very purpose of the writing is to bind parties to certain rules and prevent claims of other understandings. It is protection both of the Carrier and Organization that the printed Agreement of May 1, 1940 can be changed or modified only by further negotiation, and if any changes are agreed upon, that such agreement be reduced to writing and the modified agreement executed by both parties. See 9526, First Division." **Award 2839—3rd Div.**

This is, of course, particularly true where the claimed side oral agreement would be illegal.

"This Board is limited to the contract as written between the parties and may not read therein the claimed intent of either party not clearly expressed by the terms of the instrument." **Award 271—4th Div. (1945).**

Accordingly, it is respectfully submitted that the claim should be denied.

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 record discloses that a rate of \$1.10 per hour was established for passenger car welders. On the entire system there was only one employe doing exclusively that type of work and referred to as a passenger car welder. He was located at Kingsland, New Jersey. The carrier contends that the rate is applicable only to the incumbent of that position and is not to be applied to freight car welders elsewhere on the system who may at times be called on to do passenger car welding. The carrier also claims that Rule 12 is not involved because the claimant was not called on to fill the place of this passenger car welder.

The carrier's application of the wage scale is altogether too narrow, as is its interpretation of Rule 12, if the rule applies here. The spirit and intent of the parties to the agreement was to establish a rate of \$1.10 per hour for passenger car welding, not a rate of \$1.10 per hour for the passenger car welder who was located at Kingsland.

In practice in analogous cases the higher rate has ordinarily been held to apply to the employe in a lower rated classification who does the work in question. That such is the correct view is clearly implied by Award 797.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 4th day of November, 1946.