

Award No. 1256

Docket No. 1180

2-Erie-BK-'48

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Adolph E. Wenke when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 100, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Blacksmiths)**

ERIE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the current agreement the carrier improperly changed and thereby reduced the regular hourly differential rate of pay of Roundhouse Blacksmith M. Moran, effective on and since August 7, 1947.

2. That accordingly the carrier be ordered to restore said rate of pay continuously to this employe for all service performed retroactive to the aforesaid date but less the amount already received by him within the same period of time.

EMPLOYEES' STATEMENT OF FACTS: Blacksmith M. Moran, hereinafter referred to as the claimant, is regularly employed as such by the carrier at the roundhouse, Jersey City, New Jersey, with a seniority date thereat as of 5-16-36.

The claimant's tour of duty consists of performing all classes of locomotive work—light and heavy blacksmithing—ever since employed at Jersey City roundhouse, and therefore he has received regularly and continuously a rate of five cents per hour in excess of the ordinary blacksmiths' rate, irrespective of the type of blacksmithing work performed on any day, until instructed subsequent to August 6, 1947, that his rate of pay would be reduced five cents per hour except on days when certain blacksmithing work was performed.

The agreement dated effective as to rates of pay July 1, 1942, and effective as to rules August 1, 1942, is controlling, and in accordance with the terms thereof this dispute has been handled up to and with the highest designated carrier officer to whom such dispute is subject to appeal with the result that this officer has declined to adjust it.

POSITION OF EMPLOYEES: It is submitted that this claimant has received a rate in excess of the blacksmiths' minimum rate of pay ever since he has been employed at the Jersey City roundhouse. This is due to the unpredictable nature of blacksmithing work occurring at any time subject to be performed expeditiously and efficiently rather than as the result of the carrier's views of any requirement in any rule of the former and the current collective agreements. Certainly, if this excess rate of pay existed on any other basis, this carrier would have erroneously attempted long prior to August, 1947, to read language in the former agreement as it is now doing in the current agreement

This claim was advanced through the usual channels without settlement and it was declined on the basis of interpretations of the differential rules as established by Railway Board of Adjustment No. 2. See Awards Nos. 1267, 1393, 1424, 1773, 1986, 2089, 2138 and 2208.

This claim should be declined by the Second Division because:

1. Claimant Moran is classified as a blacksmith.
2. The differential rates apply only when differential work is performed as defined in Rule 63 of the rules dated August 1, 1942.
3. On any days when this differential work was performed, differential rate has been paid; on other days when no differential work is performed, only the established blacksmith rate is paid.

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 waived right of appearance at hearing thereon.

The record shows that claimant, during part of his regular assignment and to the extent that such work is required, performs work that comes within the classification of the duties of a heavy fire blacksmith, although the exact amount thereof and its regularity do not seem definitely established. However, the amount thereof is substantial.

Rule 63(f) of the parties' agreement unqualifiedly provides that heavy fire blacksmiths shall receive five cents per hour above the minimum rate paid blacksmiths at the point employed.

Employes whose duty it is and who actually perform the work of a heavy fire blacksmith in their regular tour of duty to the extent that such work is required, although it does not take their full time, qualify for payment under the provisions of this rule and should receive the increased rate of pay as their regular rate. See Award 960 of this Division.

The record does not show that the carrier changed the basis of Roundhouse Blacksmith M. Moran's pay on and since August 7, 1947.

It does show that under its interpretation of Rule 63(f) it has paid him the additional five cents only on those days when he actually performed duties classified as heavy fire blacksmithing. In its interpretation we think the carrier erred. Under Rule 63(f) any blacksmith regularly performing the duties of a heavy fire blacksmith, to the extent that such work is required by the carrier, should regularly be paid a five-cent higher rate than is being paid the blacksmiths at the point of employment. Roundhouse Blacksmith M. Moran should be paid accordingly. Since the claim for pay relates itself back to August 7, 1947, compensation to claimant is ordered adjusted retroactive to that date.

AWARD

Claim allowed as in findings set forth.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 1st day of July, 1948.