

**Award No. 2796**

**Docket No. 2539**

**2-TT-CM-'58**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**SECOND DIVISION**

**The Second Division consisted of the regular members and in addition Referee Livingston Smith when the award was rendered.**

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**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 134, RAILWAY EMPLOYES'  
DEPARTMENT, AFL-CIO (Carmen)**

**THE TOLEDO TERMINAL RAILROAD COMPANY**

**DISPUTE: CLAIM OF EMPLOYEES:**

1. That under the current agreement Carman C. F. Malone, hereinafter referred to as the claimant, is being improperly compensated.
2. That claimant is entitled, under the current agreement, to the higher rate for the entire day.
3. That the Carrier be ordered to compensate claimant the difference between \$2.178 and \$2.134 for all service performed on the position of Carman-Locomotive Department, subsequent to January 1, 1956.

**EMPLOYEES' STATEMENT OF FACTS:** On December 30, 1955, the carrier posted Bulletin No. 267 advertising a position of Carman-Locomotive Department, Toledo, Ohio, the duties assigned to consist of general carman duties, the painting of all locomotives, shop machinery and repair track work. This bulletin provided that the rate of pay for this position would be \$2.178 per hour, which rate was established in recognition of the fact that the successful applicant would also be required to perform the work of painting locomotives. Hours of assignment to be from 7 A.M. to 3:30 P.M., with thirty minutes lunch period between 11:30 A.M. and 12 noon, five days per week, Monday through Friday, rest days Saturday and Sunday. Exhibit A-1. Pursuant to Bulletin No. 267, claimant filed application for the position, and inasmuch as he was the successful applicant, was awarded the position on January 3, 1956. Employees' Exhibit A-2.

On January 27, 1956 the carrier posted Bulletin No. 270 advising that the position of Carman-Locomotive Department, would be abolished, effective February 1, 1956.

He being senior carman, the assignment was made accordingly.

Receipt on January 16, 1957 of copy of letter dated January 14, 1957 to Mr. H. J. Sassaman, Executive Secretary, National Railroad Adjustment Board, Second Division, from Mr. Michael Fox, President, Railway Employees' Department, AFL-CIO, is the first information we had that the organization intended to make ex parte submission without contacting the carrier in effort to arrive at joint statement of facts for joint submission if possible, as agreed at meeting of July 6, 1956; and Mr. Fox's letter is likewise our first information that claim for retroactive pay would be made, as no claims for retroactive pay have ever been received and the question was not brought up in discussions of Bulletins No. 271 (on which no bid received) and No. 277, which latter was not effective until July 6, 1956 and which the general manager agreed to issue only upon the request of the carmen of System Federation #134 to do so for the purpose of making submission, jointly if possible, to the National Railroad Adjustment Board to determine if the bulletined position violated the agreement with System Federation #134.

**POSITION OF CARRIER:** It is the management's position that there is no agreement in effect between the carrier and the organization requiring the payment of a differential rate for either painting or carman work performed in the locomotive shop (mechanical dept.) over rate paid for that work on repair track; and that if we permit the higher rate of pay for painting and/or carman work in the locomotive shop it would apply only to that work in the locomotive shop and not to that work on repair track; and further, that payment of a differential of a higher rate of pay for such work in the locomotive shop, offered in Bulletin No. 277, than carman rate of pay, is a gratuity by the carrier, and such gratuity is not subject to extension or increase by the organization to cover more than offered by the carrier.

The claims of the organization are without merit, and we request they 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 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.

The parties to said dispute were given due notice of hearing thereon.

The confronting claim concerns the alleged institution and payment of an improper rate.

It is evident from the record that the carrier has, in effect, created a composite position by and through Bulletin 277. This cannot properly be achieved under the terms of the effective agreement. Rule 11 of said agreement contemplates payment for the work in question in accordance with provisions of Bulletin 267.

Insofar as reparations are concerned, it is noted that no claims as such, were ever filed. This being true the monetary features of this claim are invalid.

**AWARD**

Claim disposed of in accordance with the above findings.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
**By Order of SECOND DIVISION**

**ATTEST: Harry J. Sassaman**  
**Executive Secretary**

Dated at Chicago, Illinois this 6th day of March, 1958.

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**SECOND DIVISION**

(The Second Division consisted of the regular members and in addition Referee Livingston Smith when the interpretation was rendered.)

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**INTERPRETATION NO. 1 TO AWARD NO. 2796**

**DOCKET NO. 2539**

**NAME OF ORGANIZATION:** System Federation No. 134, Railway Employees' Department, AFL-CIO (Carmen).

**NAME OF CARRIER:** Toledo Terminal Railroad Company.

**QUESTION FOR INTERPRETATION:** Do the words in Award No. 2796:

"Claim disposed of in accordance with the above findings."

and that part of the findings reading:

"The confronting claim concerns the alleged institution and payment of an improper rate.

It is evident from the record that the carrier has, in effect, created a composite position by and through Bulletin 277. This cannot properly be achieved under the terms of the effective agreement. Rule 11 of said agreement contemplates payment for the work in question in accordance with provisions of Bulletin 267."

mean that the claimant is entitled to the higher rate of pay subsequent to the date of Award No. 2796?

The sense of this award was to find and hold that the carrier could not establish composite positions. It was therein likewise determined that the position sought to be established by bulletin 277 was a composite position, and as such could not be properly achieved under the terms of the agreement.

The Board further found that when positions of the character described in bulletin 267 were in existence, and occupied, they (positions) were to be compensated for within the meaning of Rule 11.

This Board has no authority to direct the establishment, discontinuance or perpetuation of any position. Our authority is limited to the question of whether or not a carrier's action relative to these matters is permissible when considered in light of the confronting agreement.

The organization now asks that we force compliance with our award. Under the Railway Labor Act, as amended, this Board is limited in scope. We

may make awards, but we have no machinery for the enforcement of awards after they are made. Compliance was expected and presumed by the framers of the act. The question raised by the present request for interpretation concerns new matter which has occurred since our award was made. We cannot, under the guise of interpretation decide a new dispute, no matter how nearly similar it may be to the original submitted grievance.

Referee Livingston Smith, who sat with the Division as a member when Award 2796 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman  
Executive Secretary

Dated at Chicago, Illinois, this 28th day of October, 1958.