

Award No. 5631

Docket No. 5518

2-A&S-CM-'69

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee A. Langley Coffey when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 154, RAILWAY EMPLOYES'
DEPARTMENT, AFL-CIO (Carmen)**

ALTON AND SOUTHERN RAILROAD

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement the Carrier improperly compensated Carmen Wright, Beswick, Klein, Wyatt, Ridgeway, Peach, Hays, Horvath and Stewart for service rendered on various dates in April and May, 1966.

2. That accordingly, the Carrier be ordered to additionally compensate each in the amount of twelve and one-half (12½) cents per hour at the time and one-half rate as follows:

- (a) Carman Wright - for May 11, 12 and 18, 1966, eight (8) hours each day.
- (b) Carman Beswick - for May 13, 19 and 26, 1966, eight (8) hours for each day.
- (c) Carman Klein - for May 9, 11, 12 and 19, 1966, eight (8) hours each day.
- (d) Carman Wyatt - for April 16, May 5, 16, 18 and 24, 1966, eight (8) hours each day.
- (e) Carman Ridgeway - for May 16, 17, 18 and 19, 1966 eight (8) hours for each day.
- (f) Carman Peach - for May 17 and 23, 1966, eight (8) hours each day.
- (g) Carman Hays - for May 19, 1966, eight (8) hours.
- (h) Carman Horvath - for May 7, 12 and 26, 1966, eight (8) hours each day. For May 23, 1966, seven (7) hours.

- (i) Carman Stewart - for May 11, 13 and 26, 1966, eight (8) hours for each day.

EMPLOYES' STATEMENT OF FACTS: Carmen Wright, Beswick, Klein, Wyatt, Ridgeway, Peach, Hays, Horvath and Stewart, hereinafter referred to as the Claimants, are Car Inspectors regularly assigned to positions which carry a differential rate of twelve and one-half (12½) cents per hour "Radio Pay", by the Alton and Southern Railroad, hereinafter referred to as the Carrier.

On the dates listed in the "Statement of Claim", the Claimants were assigned to augment the forces of Carmen on the repair track. For this service they were paid the freight Carmen's rate only. This claim is for the difference in what they were paid and the rate to which they are regularly assigned.

This dispute has been handled with Carrier officials up to and including the highest officer so designated by the Company, with the result he has declined to adjust it.

The agreement effective January 29, 1947, as subsequently amended, is controlling.

POSITION OF EMPLOYES: There is no dispute with the Carrier of the facts in this case in that the Claimants are regularly assigned to positions which carry a twelve and one-half (12½) cent per hour differential above the freight carman's rate of pay. This differential is covered in the memorandum of agreement between the Carrier and the Brotherhood Railway Carmen of America dated March 11, 1966, copy of which is submitted herein and identified as Employees' Exhibit A. There is no dispute that the Claimants were assigned to augment the forces of Carmen on the repair track on the dates listed and were only paid the freight carman's rate of pay.

It is the position of the Employees that the Claimants should have been paid their own regularly assigned rate for this service under the provisions of Rule 10 of the current agreement, which reads:

"When an employee is required to fill the place of another employee receiving a higher rate of pay, he shall receive the higher rate; but if required to fill temporarily the place of another employee receiving a lower rate, his rate will not be changed."

The Employees respectfully submit that the above quoted rule is applicable whether actually relieving a lower rated employee, or performing work normally performed by a lower rated employee. That the rule was specifically designed to guard against reducing the rate to which the employee is regularly assigned when temporarily assigned to work of lower rated employees. Persuasive to the Employees' position are Second Division Awards Nos. 2573, 3624 and 3827. Particular attention is directed to Award No. 3624, where the Board, with Referee James P. Carey, Jr., sitting as a Member, stated:

"The record indicates that claimants are not regularly assigned to the wrecking crew, although occasionally used in that capacity. Carman Case is a regularly assigned leadman on the rip track, and Carman Mann is a regularly assigned welder on the repair track.

on overtime. They did not use the portable radio equipment referred to in the agreement of March 11, 1966, and were, therefore, not entitled to the arbitrary allowance. They were paid for services performed at the rate of time and one-half at the carmen's basic rate of pay, and that is all they are entitled to.

There is no justification whatever for these claims, and we respectfully request your Board to decline them.

(Exhibits not reproduced.)

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.

Parties to said dispute were given due notice of hearing thereon.

Additional compensation is here claimed to be due named claimants account service performed on claimed dates at premium rates of pay.

The dispute puts in issue a relatively new wage concept on the property, involving a twelve and one-half cents (12½¢) per hour portable radio wage differential, for purposes of applying Rule 10, which is in the basic agreement effective January 29, 1947.

Pursuant to the terms of Rule 10, employes may be temporarily used off their regular assignments in accordance with need, if paid accordingly.

Employes who are used off their regular assignments to perform work that carries a lesser wage rate than the one they agreed to take when they bid the position are not to suffer a reduction in their pay for the hours worked off their assignment. This is one of the basic principles for interpretation and application of Rule 10.

The March 11, 1966 Memorandum of Agreement on this property expressly provides that:

"When it is established that a regularly assigned carman's position will normally require the use of radio, bulletin advertising vacancy on such position will so indicate and will stipulate the rate of pay."

The portable radio wage differential is thereby engrafted upon the base hourly wage rate of \$2.9678, in accordance with the bulletin advertising vacancy, at the time bid in by the successful applicant for purposes of applying Rule 10.

There isn't any proof that the radio wage differential was stipulated in the bulletin advertising the regular position of claimants when accepted by them.

AWARD

Claim (1) Denied for insufficiency of proof.

Claim (2) Denied for same reason.

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

**ATTEST: Charles C. McCarthy
Executive Secretary**

Dated at Chicago, Illinois, this 31st day of January, 1969.