

Award No. 6122
Docket No. 5982
2-BN(NP)-CM-'71

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Francis X. Quinn when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 7, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

**BURLINGTON NORTHERN, INC.
(Formerly Northern Pacific Railway)**

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement, the Carrier improperly compensated Leading Carmen A. H. Heidt, L. E. Cotton, M. Froelich and F. Schantz for supervising higher rated employe than themselves on the following dates:

A. H. Heidt - eight (8) hours daily - February 1, 6, 7, 12, 15, 18 and 25, 1969.

L. E. Cotton - eight (8) hours daily - January 30 and 31, February 1, 3, 7, 8, 9, 10, 11, 12 and 13, 1969.

M. Froelich - eight (8) hours daily - February 3, 4, 5, 6, 8, 9, 10, 11, and 12, 1969.

F. Schantz - eight (8) hours daily - February 9 and 10, 1969.

2. That accordingly the Carrier be ordered to additionally compensate the aforesaid Leading Carmen by paying them the six (6) cent differential rate above that paid the highest rated employes for supervising and directing the work of higher rated employes in accord with Rule 52 of the Agreement.

EMPLOYEES' STATEMENT OF FACTS: Leading Carmen A. H. Heidt, L. E. Cotton, M. Froelich and F. Schantz, hereinafter referred to as the claimants, are employed by the Northern Pacific Railway Company, hereinafter referred to as the carrier, at carrier's Mandan, North Dakota Car Repair Yards.

The claimants were compensated at the car inspector's rate, plus the six (6) cents differential as leading mechanics for service performed but did not receive a six (6) cent differential rate over mechanics who because of special

for which they themselves were compensated at a higher rate. Under these circumstances, the higher rate which they received cannot logically be used as a base of computation to afford unwarranted payment to the claimants.

In closing, the carrier wishes to emphasize the fact that there was no change in the claimants' duties or areas of responsibility on the dates of claim, and that the compensation currently allowed was proper under the rules. The claim for additional payment should therefore 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.

Parties to said dispute waived right of appearance at hearing thereon.

A careful review of the record does not establish that Leading Carmen were in fact supervising welders, wrecker foremen, wrecker engineers or write up men at Carrier's Mandan, North Dakota Car Repair Yards on January 30, 31, 1969, February 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 18 and 25, 1969.

This Board has consistently held that in claims of this type the burden of proof is upon the Employees. The burden is on the Employees to prove that the claimant Leading Carmen actually assigned, supervised, and directed the work of the wrecker foreman, wrecker engineer, welder, and write-up man on the dates of claim. This they have not done. In these circumstances no violation of the agreement has been established.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 21st day of April, 1971.