Award No. 6130
Docket No. 5928
2-A&S-CM-'71

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee William H. McPherson when award was rendered.

PARTIES TO DISPUTE:

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

ALTON & SOUTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement the Carrier improperly compensated Carmen Peach, Hoffman, Bivins, Moore, Horvath, Wright, Klein, Stewart and Thurston for service rendered on various dates in November and December, 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 of pay as follows:

(a) Carman Peach – eight hours each day, November 4, 7, 9, 11, 29, December 6, 9, 18, 23, 27, 28 and 30, 1966.

(b) Carman Hoffman – eight hours each day, November 22, 23, 25, 27, 28 and December 2, 1966.

(c) Carman Bivins – eight hours each day, November 8 and 29, 1966.

(d) Carman Moore – eight hours each day, November 20, 22 and 23, 1966.

(e) Carman Horvath – eight hours each day, November 27, 28, December 13 and 30, 1966.

(f) Carman Wright – eight hours each day, November 30 and December 28, 1966.

(g) Carman Klein – eight hours November 8, 1966.

(h) Carman Stewart – eight hours each day, November 3, 7, 18, December 1, 7 and 27, 1966.

(i) Carman Thurston – eight hours each day, December 4, 5, 7, and 8, 1966.

EMPLOYES' STATEMENT OF FACTS: Carmen Peach, Hoffman, Bivins, Moore, Horvath, Wright, Klein, Stewart and Thurston, hereinafter referred to as the claimants, are employed by the Alton and Southern Railway Company, hereinafter referred to as the carrier, as car inspectors regularly assigned to positions which carry a differential rate of pay of twelve and one-half (12½) cents per hour above the freight carman's rate of pay.

A copy of the bulletin dated March 23, 1966, advertising all the car inspector positions, and designating the rate of pay of $43.0928 is attached hereto.

This bulletin was posted just subsequent to the consummation of the agreement providing for the 12½ cent differential for the use of radios, with the stipulation that positions normally requiring the use of radios will be advertised stipulating the rate of pay.

On the dates listed in the Statement of Claim the claimants were assigned to augment the force of carmen on the repair track for which they were paid at the freight carman's rate of $2.9678 instead of the rate of $3.0928 to which they were 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 question that all train yard inspectors are regularly assigned to the radio rate which is 12½ cents per hour above the freight carman's rate of $2.9678. Neither is there a question but that paragraph 2 of the agreement dated March 11, 1966 requires that such rate be regularly assigned and stipulated in the bulletin where radios are normally used, and that all the car inspectors in the train yard normally use the radios and are assigned accordingly.

Attached hereto and identified as Employes' Exhibit C–1, and C–2 is assignment Bulletin No. 6A–66 dated April 7, 1966, showing Claimants Peach, Horvath, Wright and Klein being assigned to the positions as advertised in Bulletin No. 5–66 (Our Exhibit A). Also attached and identified as Employes' Exhibit D–1 and D–2 is assignment Bulletin No. 16A–66 dated July 28, 1966 when starting time of some of the positions was changed. It shows Claimants Stewart and Thurston being assigned to positions in the train yard as listed in our Exhibit A for which the $3.0928 is applicable. The assignment bulletins could not be located showing Claimants Hoffman, Moore and Bivins being assigned to these positions but carrier's records will confirm that they were, and were paid accordingly.

In further support of the employes' contention that car inspectors in the train yard are regularly assigned to the radio rate we are attaching hereto, identified as Employes' Exhibit E–1 and E–2 a copy of notice posted December

the place of another employe." Since the claimants were not required to fill the place of another employe, Rule 10 does not apply. The rate of pay of their regular position is irrelevant. Claimants were paid at the proper rate for the work performed.

Although Rule 10 does not apply for the reasons stated, we will nevertheless, comment on the employes' argument. The claimants were car inspectors and normally received an arbitrary of 12½ cents above the car inspectors' rate as an arbitrary paid when car inspectors are required to carry and use two-way portable short wave radio sets to receive and transmit instructions relative to the performance of their work. The radios are used by car inspectors in the train yard who necessarily work either in pairs or by themselves and are at times considerable distance from the supervisors. The radios understandably increase the efficiency of the car inspectors in the train yard.

On the other hand, car repairmen on a repair track all work in the same general area on the repair track and radios are of no benefit. The same applies to employes in wrecking service. The employes nevertheless, are arguing that the claimants should be allowed the arbitrary paid to car inspectors when required to carry and use two-way portable short wave radio sets. The Employes do not contend that the claimants at the times involved in this dispute used radios. The fact that Claimants' regular assignment is that of car inspector and that they receive a 12½ cent arbitrary when using radios in connection with those duties is irrelevant because they were not taken off their regular assignments and "required to fill the place of another employe" when called as first out on the overtime board.

The claimants in this dispute were called for service on the repair track or in wrecking service in accordance with their status on the overtime board. The men were called for overtime in order to augment the existing force to handle the backlog of bad order cars or to perform wrecking service outside their regularly assigned hours. The claimants were paid at the negotiated rate of pay for such service. There is no basis for a claim for additional compensation and the employes' claim in this dispute 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.

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

The dispute involves the appropriate rate of pay for car inspectors in Carrier's Gateway Yard in East St. Louis, Illinois, when they perform overtime service as car repairmen on the adjacent repair tracks. In March, 1966 the Parties concluded an agreement providing for additional compensation of 12.5 cents per hour for carmen required to use two-way portable hand radio sets. The agreement stated in part:

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

The use of radio is required of car inspectors, but not car repairmen. The car inspector positions were then posted, showing the rate of pay (including the 12.5 cents), as required by the agreement.

The Organization contends that when car inspectors perform the work of car repairmen their overtime pay should be based on their higher rate as car inspectors. They contend that this is required by Rule 10, which states:

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

Carrier contends that this rule does not apply in these circumstances, because the 12.5 cents is not part of their basic rate, because employes are not required to accept overtime service, and because car inspectors so used are generally augmenting the work force and not filling the place of another employe.

This is the third time that Carrier has brought these contentions to this Division. Our Award 5631, involving identical circumstances, clearly held that the claim was denied only for lack of proof that the radio differential had been incorporated into the posted wage rates. Such proof is now before us. This is all that need be said in concluding that the claims should be sustained. However, since Carrier continues to submit contentions that have been rejected, we will discuss them again, in the hope of ending this series of cases.

Rule 10 provides that, for an employe working under certain circumstances, "his rate" will not change. Pursuant to the radio agreement, Carrier has determined that car inspectors will be required to use the radio, and has therefore (as required) bulletined the position of each car inspector, stipulating the rate of pay, which properly includes the radio differential. This higher rate is thus the rate of these car inspectors, and is the rate that Rule 10 refers to as "his rate," which will not change when he is required to fill temporarily the place of another employe receiving a lower rate.

Carrier next contends that an employe is not used "to fill temporarily the place of another employe" unless he is replacing a specific individual. In Award 5440 (same Parties) we rejected that contention by stating that claimants "were used to augment the work force and thus filling the places of other employes within the meaning of Rule 10." The Rule refers to "another employe" — not another specific employe. If one employe were not given a particular assignment, another one would be. Thus any employe who is given temporarily a different assignment is filling the place of another employe. Under Carrier's contention, if a man was needed to replace Car Repairman John Doe (who was off sick) and another was needed to augment temporarily the repair work force, and if Carrier transferred two car inspectors to fill these needs, one of the latter would have to be designated as John Doe's replacement and would receive his own car inspector rate, while the other would have to take a reduction to the car repairman rate. It seems unlikely

that such an inequitable result was intended by the parties when they agreed to Rule 10. We believe that our interpretation is in accord not only with the language of the Rule but also with the probable intent of the parties.

Carrier finally contends that Rule 10 does not apply to overtime assignments, because employes are not "required" to accept such service, but make themselves available for it by voluntarily listing themselves on the overtime board. We do not believe that the language of Rule 10 can properly be interpreted in such a narrow way. To accept Carrier's contention would raise various problems of application and would dilute the clear intent of the Rule. For example, when not enough of those on the overtime board accept a particular call, certain of them are forced to take the assignment. Is such service to be considered as required or as voluntary under Carrier's theory that it could have been avoided if the employe had kept his name off the overtime board? Or should it be considered that no assignment is really "required," since an employe is free to quit?

We conclude that any work assignment made by management automatically becomes "required," within the meaning of Rule 10. To hold otherwise might well raise problems of job discipline.

AWARD

Claims sustained.

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.

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