Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 8215
Docket No. 8025
2-SP-F&O-'80

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

Parties to Dispute: ((System Federation No. 114, Railway Employes' Department, A. F. of L. - - C. I. O. (Firemen and Oilers) Southern Pacific Transportation Company

Dispute: Claim of Employes:

1. That under the provisions of Rule 20 of the Controlling Agreement, Firemen and Oiler Clifford Workman, was improperly paid since May 1st. 1977, until his retirement. The above listed employee hereinafter referred to as Claimant was denied reimbursement for the difference of pay between Laborer's rate of pay and Tractor Operator's rate of pay.

2. That accordingly, the Carrier be ordered to:

Pay the aforesaid employee the difference between the Laborer's rate of pay and Tractor Operator's rate of pay; since May 1st. 1977, until his retirement.

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.

Claimant, Clifford Workman, employed as a Laborer at Stockton, California allegedly was denied benefit of a higher rated work during the period May 1, 1977 to date of Claimant's retirement, effective January 1, 1978.

The Organization contends Claimant was denied reimbursement for the difference of pay between Laborer's rate of pay and Tractor Operator's rate of pay in violation of Rule 20 of the Controlling Agreement effective October 16, 1937 and reprinted September 1, 1970, including revisions. Rule 20 reads in full as follows:

Rule 20

HIGHER and LOWER RATED WORK

An employee required to perform work for which the rate of pay at the point employed is higher than his regularly assigned rate of pay, will be paid the higher rate of pay, on the following basis:

1st: Working thirty (30) minutes or less at a specific higher rate, the higher rate will not be allowed.

2nd: Working thirty (30) minutes to one (1) hour at a specific higher rate, will be allowed one (1) hour at that rate.

3rd: Working over one (1) hour and not exceeding four (4) hours at a specific higher rate, will be allowed that higher rate on a minute basis.

4th: Working more than four (4) hours at a specific higher rate, will be allowed the higher rate for the shift on which the higher rate is worked.

If required to temporarily perform work for which a rate of pay lower than his regular assigned rate of pay is established, his regular assigned rate of pay will not be reduced.

Note: If worked on more than one higher rate, none of which exceeds four (4) hours, the higher rates worked will be allowed in accordance with Items 1st to 3rd above. If worked on more than one higher rate, including a rate higher than one worked more than four (4) hours, such highest rates will be computed separately for each shift of duty.

Carrier has resisted the instant claim on both substantive and procedural grounds. The Carrier takes the position the claim is procedurally defective as it was not presented and handled on the property either in accordance with Circular 1 or Rule 32 of the Controlling Agreement. Specifically, Carrier maintains there had been no presentation of the instant claim at the local level. Carrier therefore urges the Board to dismiss the claim based upon these procedural defects.

The Board notes that during the conference on the property, the General Chairman presented to Carrier's Labor Relations Officer copies of the correspondence pertaining to the instant claim which had been exchanged between the

parties at the local level. Such correspondence included letters from the Carrier on Company stationary with references to the General Chairman's letter of July 29, 1977, setting forth the original claim and addressed to the Superintendent. In response to a denial by Carrier's Labor Relations Officer that he neither had ever seen the correspondence or that the local level had copies thereof, the General Chairman offered to let the Labor Relations Officer make copies for his files, an offer that was declined. Clearly, Carrier's position leads to the conclusion the Organization was guilty of having fabricated the correspondence in question. However, as the Board cannot find any evidence in the record establishing fraud or fabrication, we must reject as inconclusive the mere inference of such conduct.

In Third Division Award 22531 involving this very Carrier and the Maintenance of Way Organization, the Board was faced with a somewhat similar situation though with the shoe on the other foot; the Organization asserting non-compliance because it had allegedly never received a copy of the highest officer's declination. There, as here, the defending party produced a copy of the letter as proof of agreement compliance. The Board accepted this proof, noting, in pertinent part:

> "Here, the parties have followed the practice of using the regular mail. Carrier has established that it mailed its letter of denial in a timely fashion. Carrier did all it could do under the system jointly chosen by the parties. To hold it responsible for the failure of the postal service would be unreasonable."

While the postal system failure may be just one of the variables or factors involved in this case, the facts remain here, as in Award 22531, that the Organization produced copies of both the Carrier and their correspondence, and under the authority of Award 22531, this is sufficient on this property. The Board believes that good labor relations between the parties is built upon trust and respect for the word of the other side and we admonish both sides to so view their dealings with each other.

As to the merits of the instant claim, we note allegations and counter allegations regarding the amount of time the Claimant was alleged to have performed tractor operating duties during the period in question which, by the admission of both parties would be sixty (60) days retroactive to the filing of the claim at the local level on July 29, 1977 and then forward from that date. While the Organization rephrased their statement of claim in the appeal to this Board, we think that the parties had no problems understanding the overall gist of the claim and that the change in the language of the claim was not so substantial as to alter the basic intent and scope of the initial claim, nor to amend the claim or to mislead the other party. Therefore, variance as a defense against such changes is not applicable under the prevailing circumstances in the instant case.

Given the numerous assertions and counter assertions made by the parties, it is impossible for the Board to make an evidentiary determination as to what actually transpired on the many dates encompassed in the instant claim. However, the Board believes both parties are knowledgeable as to the proper interpretation of Rule 20 which is plain and unambiguous, that is, "Working more than four (4) hours at a specific higher rate, will be allowed the higher rate for the shift on which the higher rate is worked." The other provisions of Rule 20 applying to alternative work situations are equally clear and unambiguous to their interpretation and application. Therefore, based on the clarity and straightforwardness of the application of Rule 20, the Board relying on the good faith and honesty of the parties has decided to remand this claim back to the property for settlement. The Board directs the parties to thoroughly examine the applicable records. If the records reveal that Claimant did not perform higher rated work for more than four (4) hours on the days in question, then this claim is without merit. If, on the other hand, Claimant did perform higher rated work for more than four (4) hours on said days, then he is entitled to compensation in accordance with Rule 20. The Board shall retain jurisdiction in the event the parties are unable to dispose of the claim in accordance with the guidelines specified above.

A W A R D

Claim is remanded back to the parties in accordance with the foregoing findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 9th day of January 1980.