

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12500
Docket No. 12437
93-2-91-2-249

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

PARTIES TO DISPUTE: (Brotherhood Railway Carmen/
(Division of TCU
(
(Birmingham/Southern Railway
(Company

STATEMENT OF CLAIM:

"1) That the Birmingham/Southern Railroad Company (hereinafter referred to as the "Carrier") violated the agreement, particularly but not limited to Articles 13 and 59, when they refused to allow carman trainees Gary Glass and Ralph Crawford (hereinafter referred to as the "Claimants") the rate of pay of the employes whom they were relieving on August 13, 14, 15 and 16, 1990.

2) And, that accordingly, Carrier should be ordered to compensate Claimants for the difference between 80% and 100% of the Carman's rate of pay on each date applicable to each Claimant."

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.

On the claim dates, Trainees were assigned to fill a journeyman Carman vacancy, and they were paid 80% of the Carman's rate, but the Organization asserts that they should have been paid 100% of the rate pursuant to Article 13:

"(a) 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 Organization seeks the difference between 80% and 100% of the Carman's rate for each of the claim dates since "...if the agreement had intended that an employee would receive 80% of the rate...it surely would have said so. But it did not."

The Carrier relies upon Article 57 (B) Section 2 (A):

"...carman trainees and upgraded carmen will be paid as follows during their first 1220 days of actual service...

(a) For the first 244 days of service, such employees shall be paid 75% of the applicable rates of pay (including COLA).

(b) For the second 244 days of service, such employees shall be paid 80% of the applicable rates of pay (including COLA)."

Carrier asserts that entry rate language has been in the Agreement since 1978, but Article 13 was introduced in 1964. Thus, it was incumbent upon the authors of Article 57 to state any exceptions they may have intended to Article 13 in 1978. Yet, they failed to do so. Carrier also argues that its prior practice was to pay in the same manner as was done here.

The Organization has also cited Article 59 dealing with "graded rates" which was allegedly not the case here, and that reinforces the argument that Article 13 controls.

The Board does not dispute the Carrier's contention that an Agreement must be read as a whole, nor do we question that a specific Rule take precedence over a general Rule. But here, we have difficulty in equating which is general and which is specific. Carrier argues that the later chronological Rule must apply, but we do not necessarily agree when the Rules are not necessarily speaking of the same circumstances. To be sure, the Carrier did cite one prior instance when it asserts that it paid in the same manner as recorded here, but it also stated that the Rules, not practice, should govern.

Each party's contention has merits if one simply reads the Rule relied upon by that party. It is, of course, a reading of the Rules, and an attempt to reconcile them, that causes the problem. Rule 57 serves a function. It provides a percentage rate to Carman

Form 1
Page 3

Award No. 12500
Docket No. 12437
93-2-91-2-249

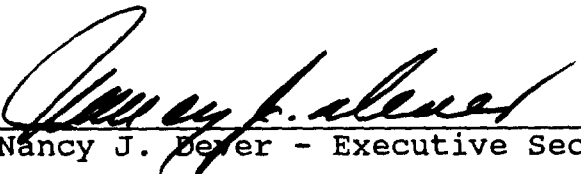
Trainees of the applicable rates for specified periods of time. But, Rule 13 also serves a function. It provides the rate to be paid when an employee is required to fill the place of another employee receiving a higher rate of pay. In that circumstance, the "substitute" receives the higher rate. It may very well be that this Award is not precedent to future cases where the record may show the intention of the authors of the provision in conflict, but under this record, we are inclined to sustain the claim.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 27th day of January 1993.