

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Herbert B. Rudolph, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

THE DELAWARE & HUDSON RAILROAD

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood:

(a) That the Carrier violated the provision of Rule 19 when it paid L. J. Corsall at the \$190.40 per month rate for services he performed as ditcher engineer during the months of July, August and October, 1939;

(b) That L. J. Corsall be paid while assigned as engineer during the months of July, August and October, 1939, the difference between \$190.40 per month and the rate of \$245.40 per month,—the rate applicable to the position of ditcher engineer to which he was assigned.

EMPLOYEES' STATEMENT OF FACTS: Ditcher No. 3 had been working regularly on the day shift assignment only. The operator assigned to Ditcher No. 3, Clyde Butler, was paid a monthly rate of \$245.40.

L. J. Corsall was regularly assigned as fireman on Ditcher No. 3.

Ditcher No. 3 was assigned to Mechanicville terminal during July, August and October, 1939, where it was used to coal engines. It was found that service for 24 hours a day was necessary. Whereupon the Carrier assigned Corsall as operator of the ditcher from 6:00 P. M. to 6:00 A. M.—the night shift.

The rate received by the regular operator was \$245.40 per month. For Corsall, the Carrier placed into effect a lesser rate. Consequently, Corsall was underpaid, for the period involved in this claim, in an amount which, for the full month, would equal \$55.00. When Corsall was assigned as operator of the ditcher he was entitled to the rate paid the regular operator.

The duties required of Corsall, as ditcher engineer, were exactly the same as the duties performed by the operator of the same ditcher on the day shift, and who was paid the rate Corsall is here claiming.

An agreement is in effect between the parties bearing effective date of July 1, 1939, which, by reference, is made a part of this Statement of Facts.

POSITION OF EMPLOYEES: The agreement in effect between the Carrier and the Employees contains the following provisions in Rule 19. The rule is quoted in support of the Employees' claim.

"RATES WHEN FILLING OTHER POSITIONS

Rule 19. Employees assigned to higher rated positions shall receive the higher rate while so engaged; if assigned to a lower rated position their rate will not be changed."

The Employees contend that the Carrier failed to comply with the provisions of the above quoted rule and that L. J. Corsall was paid a lesser rate than the rate applicable to the position which he was instructed and required to fill.

It will be observed from the Employees' Statement of Facts that Ditcher No. 3 was in service at Mechanicville working on a day shift only. During the period involved in this claim, in addition to the day shift the Carrier established a night shift, thus requiring the services of an additional operator, to handle the machine on the night shift.

The rate of pay in effect for the operator employed on the day shift was \$245.40 per month. For the night shift the Carrier placed into effect arbitrarily a rate of \$190.40 per month.

The provisions of Rule 19 are clear and definite and provide that an employee assigned to a higher rated position shall receive the higher rate while so engaged. Corsall was engaged for the period involved in this dispute on a position which carried an established rate for operators of \$245.40 per month and he received compensation for his services at the rate of \$190.40 per month, thus Corsall suffered a loss in earnings in the amount of \$55.00 per month as a result of the Carrier's failure to comply with the provisions of Rule 19.

There exists no disagreement between the Carrier and the Employees as to the fact that the rate applicable to Ditcher No. 3 was \$245.40 per month. The operator on the day shift received for his services the rate of \$245.40. The hours of the operator on the night shift were from 6:00 P. M. to 6:00 A. M. The duties performed by both operators were identical in character and the same machine was in service during both shifts.

The Employees contend that the Carrier violated the provisions of Rule 19 in arbitrarily paying the night shift operator a rate less than the agreed-to rate paid to and received by the operator in charge of the machine from 6:00 A. M. to 6:00 P. M.

We contend that the rate of \$245.40 is the correct rate and that it should have been paid to Corsall for performing services between 6:00 P. M. and 6:00 A. M., and that Corsall should be paid the difference between what he received at \$190.40 per month and the amount he was entitled to receive at \$245.40 per month as is provided for in Rule 19.

This is a just claim and we respectfully ask your Board to sustain it.

CARRIER'S STATEMENT OF FACTS: During the months of July, August, and October, 1939, it was necessary to use a ditcher coaling engines at Mechanicville. L. J. Corsall, regular ditcher fireman, was assigned to operate this ditcher and paid for such service at rate of \$190.40 per month.

POSITION OF CARRIER: Claim in this case is based on Rule 19 of agreement effective July 1, 1939, which reads as follows:

"Employees assigned to higher rated positions shall receive the higher rate while so engaged; if assigned to a lower rated position their rate will not be changed."

This Carrier has three ditchers, all of identical construction, and two rates of pay for the three ditcher engineers regularly assigned to operate these machines, that is, \$190.40 and \$245.40. At the time the schedule was nego-

tiated, agreement could not be reached on rates of pay, and it was agreed that rates of pay would be submitted to arbitration. In connection with rates for the three ditcher engineers, Management proposed that they all be \$200.00 per month and the organization proposed that the rates then in effect be continued. During the arbitration proceedings, the Carrier agreed to continue the present rates of this particular class and the question was withdrawn from arbitration. We, therefore, have three regularly assigned ditcher engineers, operating identical machines, and two rates of pay, that is, \$190.40 and \$245.40.

The temporary position filled by L. J. Corsall, which is the subject of this claim, was a new position. He was not filling the position of a regularly assigned ditcher engineer. The new position was created at rate of \$190.40, which rate is exactly the same as the rate of a regularly assigned engineer, operating an identical machine.

Rule No. 19 provides that an employee assigned to a higher rated position shall receive the higher rate. This employee was not assigned to a higher rated position. He was assigned to a new position. While there is no rule in the agreement which provides for a method of arriving at rates for new positions, the rate for this position is the same as the rate of an identical position, which is subject to the agreement.

The Carrier contends the new position created in this case was properly established at rate of \$190.40, a negotiated and agreed to rate for a regularly assigned ditcher engineer on an identical machine in the same seniority district, and respectfully requests claim be denied.

OPINION OF BOARD: The agreement provides two rates for Ditcher Engineers; one rate is \$190.40 a month, the other is \$245.40 a month. The facts disclose that the engineer's position on Ditcher No. 3 carries the higher rate of \$245.40. Claimant was assigned to the position of engineer on Ditcher No. 3. It follows that Claimant is entitled to the higher rate.

If, as contended by the Carrier, the negotiated rates were intended to apply to individuals and not to positions, we believe the individual's name would appear.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employee involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Claimant is entitled to the rate of \$245.40 a month.

AWARD

Claim (a) sustained; Claim (b) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 24th day of September, 1943.