

Award No. 2301
Docket No. MW-2233

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Herbert B. Rudolph, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
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 for service performed as ditcher engineer at the rate of \$190.40 per month during June and July, 1940;

(b) That L. J. Corsall be paid while assigned as engineer during the months of June and July, 1940, 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.

EMPLOYES' 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 June and July, 1940, 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 EMPLOYES: The agreement in effect between the Carrier and the Employes contains the following provisions in Rule 19. The rule is quoted in support of the Employes' 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.

POSITION OF CARRIER: The facts and circumstances involved in this case are identical with those involved in Case No. 1.41 MW and ex parte submission of the Carrier on Case No. 1.41 MW is being forwarded herewith. Management submits the arguments and evidence presented in Case No. 1.41 MW to sustain its position in Case No. 4.41 MW. (See Award 2300, docket MW-2232.)

OPINION OF BOARD: This claim is identical with that in Docket MW-2232, Award 2300, except as to the period of time involved.

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 employe 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 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.