

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Bruce Blake, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that Mr. C. N. Grube is entitled to be paid the monthly rate of \$190.20 applicable to position in the class of B. & B. foreman, Rio Grande Division, for each day assigned to a position in this class on the Rio Grande Division, retroactively to September 12, 1938.

EMPLOYES' STATEMENT OF FACTS: Effective May 1, 1925, an Agreement covering wage rates was reached between the Brotherhood of Maintenance of Way Employes and Southern Pacific Company (Pacific Lines), applicable to positions on the former El Paso & Southwestern Railroad, which line of railroad was merged with the Southern Pacific Company (Pacific Lines).

The Wage Agreement provided for rates applicable to positions on each of the operating divisions which were established, namely the New Mexico and the Rio Grande Division.

The New Mexico Division embraced the territory from El Paso, Texas, east to Tucumcari, New Mexico, and the Rio Grande Division covered the territory from El Paso, Texas, west to Tucson, Arizona.

Under the Agreement of May 1, 1925, a monthly rate of \$170.00 was established for positions in the class of B. & B. foreman, New Mexico Division, and a monthly rate of \$175.00 was established for positions in the class of B. & B. foreman, Rio Grande Division.

The monthly rates applicable to positions in the class of B. & B. foreman as established May 1, 1925, were subsequently increased through a Mediation Agreement effective August 1, 1927, and through Mediation Agreement effective August 1, 1937, establishing the following rates of pay for this class of employees at the time dispute arose:

B. & B. Foremen	New Mexico Division	\$185.20
B. & B. Foremen	Rio Grande Division	190.20

July 27, 1930, the Carrier abolished the New Mexico Division and consolidated the territory with and it became a part of the Rio Grande Division. Such consolidation of divisions and territory did not, however, in any way affect or change the wage rates established for positions in the class of B. & B. foreman on the territory of the respective divisions as they existed on May 1, 1925, except as to increases in wage rates granted through mediation agreements.

The awards referred to above are merely a few of the many that could be cited on this point. The principle which they illustrate and follow is logical and reasonable, and peculiarly applicable to the present case. Clearly, no injustice is done to the claimant if his retroactive compensation be limited to the period beginning on the day when the carrier was first advised of the claimed departure from the agreement. An award allowing any greater measure of back pay is not simply compensatory; it amounts to the imposition of a penalty for a mere inadvertent departure which, as the record here shows, was corrected promptly when called to the carrier's attention.

CONCLUSION

In its essence, this claim is nothing more than an attempt to fasten a penalty upon the carrier for a minor default when, as a matter of fact, the blame for the oversight rests upon the claimant and the organization fully as much as upon the carrier. For if it be the carrier's duty to meet its obligations under its agreement, it is equally the duty of those who are parties to or beneficiaries of that agreement to advise the carrier of any claimed default, rather than to sit idly and permit penalties to accumulate. The carrier therefore respectfully urges that this Division, following the principle of the cited awards, should deny the claim.

OPINION OF BOARD: In 1925 the El Paso and Southwestern Railroad negotiated an agreement with the Brotherhood which provided for a differential of \$5.00 in monthly salary in favor of B. & B. foremen on its Rio Grande Division over those on its New Mexico Division. Subsequently the El Paso and Southwestern became a part of the Southern Pacific Company (Pacific Lines). In 1930 the New Mexico Division was merged with the Rio Grande. The \$5.00 differential in salary of B. & B. foremen, however, was maintained in the respective territories of the former Divisions.

Prior to September 12, 1938, Claimant Grube was a B. & B. foreman on what was formerly the New Mexico Division where the wage schedule for such a position was \$185.20 a month. On that day he was transferred to the Rio Grande Division where the wage schedule for B. & B. foremen was \$190.20. The Carrier continued to pay him \$185.20 until June 17, 1939, when, upon a claim being filed in his behalf, it increased his pay to \$190.20. It declined, however, to make the increase retroactive to September 12, 1938.

The claim was progressed to this Division April 15th, 1943.

The Carrier makes two contentions: (1) That to compel it to pay the schedule wage prior to the date of making claim (June 17, 1939) amounts to exaction of a penalty; (2) That by delaying four years in progressing the claim to this Division the employees are estopped from pressing the claim.

Neither contention is tenable. By the plain terms of the contract the Carrier became indebted to Claimant at the rate of \$190.20 a month from Sept. 12th, 1938. It was as much its duty as his to see that he got it. It does not constitute a penalty to require any one to pay what he has agreed to pay for services.

Neither the law nor the Agreement puts any time limitation on making or progressing claims. And the essential element of estoppel is not present. The Carrier has suffered no detriment by reason of the delay.

On June 17th, 1939, it owed the Claimant the difference between \$190.20 a month and \$185.20 for services rendered from Sept. 12th, 1938. Upon the face of the record it still owes him for services rendered between those dates.

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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 24th day of March, 1944.