

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Bruce Blake, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES**

LEHIGH VALLEY RAILROAD COMPANY

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

1. Mr. W. S. Parke, regularly assigned Stores Attendant, Sayre Stores Department, is entitled to the difference in pay between the rate of Stores Attendant 66¢ per hour and Gang Foreman's rate 87¢ per hour for service performed as Gang Foreman on January 30th, February 12th, 17th, 20th, 23rd, 24th and 26th, 1943, and shall now be paid the difference in pay between these rates.

EMPLOYEES' STATEMENT OF FACTS: Prior to the year 1939, there existed a regular established position of Gang Foreman at the Sayre Iron House. The position was later discontinued, and after protest by the Committee, a position of Stores Attendant was created at the Iron House. The duties of the Stores Attendant position were located at the Iron House and the position did not contemplate supervising the unloading of material at the Shop. On the duties for which claim is made, Mr. Parke was instructed to supervise the unloading of material at the Shop—these being the duties of the Gang Foreman's position discontinued in 1939.

Claim was duly filed by Mr. Parke who contended that he was entitled to the Gang Foreman's rate for the dates in question, in accordance with the provisions of Rules 4 and 9 of current agreement. Mr. Parke received the following letter from General Storekeeper Sidey, February 10, 1943, reading:

"In connection with your time card of January 30th claiming 8 hours difference in rate between Stores Attendant and Gang Foreman:

We have changed your card to 2 hours and will allow the Gang Foreman's rate for this length of time, as we understand this was approximately the length of time."

Mr. Parke received the following letter from General Storekeeper Sidey, February 13, 1943, reading:

"The allowance of claim made in our letter of February 10th has been rescinded and claim will be withheld pending investigation of a situation which has developed since our previous letter."

Mr. Parke received the following letter from Mr. Sidey, March 9, 1943:

"We return herewith your time cards for Jan. 30th, Feb. 12th, 17th, 20th, 23rd, 24th and 26th claiming difference in rate between Stores Attendant and Gang Foreman."

CARRIER'S STATEMENT OF FACTS: Mr. W. S. Parke, regularly assigned as Stores Attendant in the Iron House at Sayre Storehouse, and when heavy material is loaded or unloaded, which is beyond the capacity of the Stores Attendant, laborers are furnished to do the loading and unloading. In such cases, the Stores Attendant does not do any work outside of his regular assignment and, by no means, becomes a gang foreman because he has assistance in handling heavy material.

POSITION OF CARRIER: While the Employes' Statement of Claim does not show under what rule the claim is made, when the question was discussed on the property, Rules 4 and 9 were referred to as violated. Rule 4 (a) of the Clerks' Agreement reads as follows:

"Employes temporarily assigned to higher rated positions, and assuming the duties and responsibilities of the positions, shall receive the higher rates while occupying such positions. This provision will not apply when absent employee is paid."

There was absolutely no change in the assignment or the duties of Store House Attendant, and in the cases complained of he was merely given laborers to assist in loading and unloading heavy material, and certainly there is no basis whatever for the claim that this fact converted his position from a Store House Attendant to a Gang Foreman and entitles him to the rate of a gang foreman.

Rule 9 of the Clerks' Agreement reads as follows:

"When there is a sufficient increase or decrease in the duties and responsibilities of a position or change in the character of the service required, the compensation for that position will be subject to adjustment by mutual agreement with the Representatives, but established positions will not be discontinued and new one created under the same or different titles covering relatively the same class or grade of work, which will have the effect of reducing the rate of pay or evading the application of these rules."

This rule has no bearing on the case in question, as the duties and responsibilities of the position were not changed.

We beg to submit there is absolutely no basis for this claim, and the rules of the Clerks' Agreement or the practices in effect were not violated, and it should be denied.

OPINION OF BOARD: We think the following facts may be said to be beyond dispute. Prior to 1939 there existed a position of gang foreman at Sayre Iron House. It was abolished and, subsequently a position of Stores Attendant was created at the Iron House. At the time this dispute arose claimant was assigned to the latter position. On the days in question there were quantities of heavy material to be loaded and unloaded at the Shop. Claimant and a gang of men were assigned to do the work. That claimant was in charge of the gangs on the days in question may, we think, be conclusively inferred from the facts of record. The rate of pay for foreman was 87¢ per hour; as attendant claimant received 66¢ per hour.

His claim is for the difference in the two rates of pay. The claim is based on Rule 4 (a), which provides:

"Employes temporarily assigned to higher rated positions, and assuming the duties and responsibilities of the positions, shall receive the higher rates while occupying such position. This provision will not apply when absent employee is paid."

We think it is clear from the record that on the days in question claimant was temporarily transferred from his position of attendant at the Iron House

and given supervision over gangs, loading and unloading heavy material, at the Shop. While engaged in such supervision he was in fact performing the duties of foreman. He is entitled to foreman's rate of pay for the time consumed in the performance of such duties.

It is not clear from the record how much time on each of the days in question he was acting as foreman. The claim should be allowed only for the actual time he acted in that capacity.

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 employes involved in this dispute are respectively carrier and employes 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 to the extent of actual time claimant was in charge of gangs at the Shop on the days in question.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 26th day of April, 1944.