

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Jay S. Parker, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

READING COMPANY

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

(a) That Eli Houch was erroneously classified and paid from January 15, 1936 to August 1, 1937, and thereafter until his retirement from the service.

(b) That Eli Houch's rate of pay should have been \$210.50 per month from January 15, 1936 to August 1, 1937, and \$220.70 per month from August 1, 1937 until he retired.

(c) That Eli Houch be paid the difference between what he received under the classification of Gang Leader and what he was entitled to receive if he had been properly classified as Tinsmith Foreman, for the period January 15, 1936 to the time of his retirement.

EMPLOYEES' STATEMENT OF FACTS: Eli R. Houch entered the service as a Tinsmith on October 1, 1902, was appointed to the position of Foreman Tinsmith on October 10, 1922, with headquarters at 816 Brown Street, Philadelphia, Pa., and a monthly salary of \$210.50.

On October 1, 1935, the title of Tinsmith Foreman was changed to that of Gang Leader and the monthly rate of \$210.50 was also changed to an hourly rate of 92 cents.

The duties performed by the claimant were the same after October 1, 1935 as they were prior to October 1, 1935, the only change being the rate of pay received by the claimant.

The claimant, while classified as Gang Leader, was required to perform the duties of a foreman, having the responsibility of estimating on all work to be performed, laying out of the work, supervising the work performed by the men in the gang, keeping daily and monthly reports, such as, time of the men in the gang, material used, and inventories of material and supplies.

The claimant worked directly under, received his instructions from, and reported to the Master Carpenter.

An agreement effective January 15, 1936, revised January 1, 1944, is in effect between the Carrier and the Brotherhood which is by reference made a part of this Statement of Facts.

Carrier insists there is no merit or justification for retroactive compensation as requested in the claim, however, should the Board consider otherwise and give any consideration to retroactive compensation the Carrier holds that such compensation could only be, in fairness and equity, applicable from October 27, 1941, the date the Brotherhood of Maintenance of Way Employees presented the claim to the Carrier, until November 1, 1941, the date Houch retired.

OPINION OF BOARD: For sometime prior to January 1, 1935, a position of Foreman Tinsmith had been occupied by Eli Houch at a monthly rate of \$210.50. On the date mentioned that position was abolished and in lieu thereof another, that of Gang Leader Tinsmith, with pay at 92 cents per hour, was established which thereafter was filled by Houch until November 1, 1941, the date of his retirement, during all of which period of time he performed the same services he had performed when working the position of Foreman Tinsmith. A contract in force on January 1, 1935, entered into between the Carrier and a Committee of the Maintenance of Way Department did not include bridge and building foreman or gang leaders, although an earlier agreement had done so. Therefore, there was no prohibition against the establishing of the position of Gang Leader Tinsmith and it is not disputed the Carrier could under such agreement pay persons assigned to that position any rate, and for that matter work employees under any title desired at that time. Subsequently, on January 15, 1936, an agreement was entered into between the Carrier and the Brotherhood of Maintenance of Way Employees and the positions of Foreman Tinsmith and Gang Leader Tinsmith were again brought within the scope of the agreement. Houch continued in his position as Gang Leader Tinsmith thereafter without protest or objection on the part of himself or the Brotherhood, either as to position, classification, or rate of pay until four days before his retirement when claim was then made that from and after the date of the execution of the current agreement, since Houch's performed services were those of a Foreman Tinsmith and not a Gang Leader Tinsmith, his classification was improper and he should be compensated as a Foreman from that time to date of retirement notwithstanding.

No doubt the contention made by the parties would have merit if, after the execution of the last and present contract, the Carrier had classified Houch as a Gang Leader Tinsmith and paid him at the fixed rate of pay for that position but required him to perform the duties of a Foreman. However, that is not the situation with which we are confronted. Houch's classification and rate of pay were fixed by the Carrier at a time when it had an absolute right to take that action. The position was in existence with its rate of pay certain when the contract was signed and all parties are presumed to have had knowledge of that fact. The position as well as its rate of pay came under the agreement with status unchanged. That status continued until it was changed by negotiation and subsequent agreement. No action of such character was initiated and without it Petitioner cannot maintain its claim that because Houch as a Gang Leader Tinsmith performed the duties of a Foreman, he should be compensated for the difference in the amount of pay involved between the last position referred to and the one under which, so far as the current agreement is concerned, he was classified and paid. While the factual situation is distinguishable the principle involved in this case is similar to the one involved in Award 1609 of this Division and our decision there supports the conclusion just announced.

The decision in Award 1658, cited by Petitioner, has been given careful consideration and attention. It is authority for the proposition, to which we have heretofore referred and indicated our approval, that if after the agreement had been entered into between the Carrier and Brotherhood, the employe had been assigned to a position classified as Gang Leader Tinsmith with fixed duties, and thereafter been required to perform the services of a higher rank position, he would have become entitled to the compensation of the higher

rank. However, such decision is not applicable under the facts and circumstances here for the simple reason the position of Gang Leader Tinsmith and its rate of pay came under the agreement with duties fixed as those of a de facto foreman and was subject to change by negotiation and agreement only.

Other contentions advanced by the respective parties have been given careful consideration but as they are not essential to a determination of the controversy will not be related or discussed.

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 Employees involved in this dispute are respectively carrier and employees 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 record discloses no grounds for allowance of the claim.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 19th day of January, 1945.