

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

GALVESTON WHARVES RAILROAD COMPANY

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

(1) That under the application of Article XXXIII, Rule 5, of the agreement in effect, an employe assigned to operation of power machines of any and all types, shall be classed as a shop mechanic and/or carpenter;

(2) That Maintenance of Way Blacksmith Helper James T. Meares, who is regularly assigned to operate power machines, such as drill press machines, die machines, shear machines, and so forth, shall, while assigned to that class of service, be paid the rate applicable to a shop mechanic, which is eighteen cents (18c) per hour higher than the rate applicable to a blacksmith helper;

(3) That Blacksmith Helper James T. Meares shall be paid the difference between what he received at the rate applicable to a maintenance of way blacksmith helper and that which he would have received at the rate applicable to a shop mechanic, or eighteen cents (18c) per hour over and above the rate paid for all of the time that he has been assigned to operate power machines in shops, retroactive to May 1, 1940.

EMPLOYEES' STATEMENT OF FACTS: Subsequent to May 1, 1940, James T. Meares, who is regularly assigned to a position of blacksmith helper, has been assigned and required by the Carrier to operate various types of power-driven machines. In allowing Mr. Meares pay for this service the Carrier has paid him the blacksmith helper's rate for all time worked, which is eighteen cents (18c) per hour less than the rate applicable to a shop mechanic.

Agreement between the parties is by reference made a part of this Statement of Facts.

POSITION OF EMPLOYEES: On May 1, 1940, the Galveston Wharves Railroad Company entered into an agreement with the Brotherhood of Maintenance of Way Employees covering employees in the Maintenance of Way Department:

Article XXV, Rule 1, of that agreement provides as follows:

"ARTICLE XXV, COMPOSITE SERVICE.

Rule 1. An employe coming within the scope of this agreement required to and performing work during the whole or a part of his daily assignment (whether or not covered by agreements) carrying a higher rate of pay, will be allowed actual time worked at the higher rate of compensation, with a minimum allowance of one (1) hour. When temporarily assigned by the proper officer to a lower rated position his rate of pay will not be reduced."

charged with knowledge of the conditions existing at the time and should have made some provision therefor if they were not satisfied with these conditions. Specific attention is invited to Award No. 1609 by this division. As said in Award No. 1806: "Employees do not ordinarily accept wages over a period of a year and a half or longer without protest if they believe they are not receiving what is due them according to the terms of their contract. They should not permit an employer to continue in the belief that the agreement has been complied with and then after a long lapse of time enter a claim for accumulations of pay". To the same effect see Awards No. 3127 and No. 2849.

Certainly his duties of aiding the blacksmith and of learning the position of blacksmith is by performing the work assigned to him by the blacksmith and which the blacksmith considers is that of assistance to the blacksmith and work that is necessary for the helper to perform in order to learn the other position.

In addition, it is the position of the carrier that since the first complaint was made by the employe on March 31, 1945, at which time he for the first time stated that he should be paid a different rate of pay, the employe is barred from recovering any pay prior to that date. His long acquiescence in the practice here involved operates as an estoppel and the employe should not be allowed to go back and recover pay prior to that time. In this connection, we respectfully invite the Board's attention to Awards No. 3002, No. 2281, No. 2605 and 1289, all decided by the Third Division and all of which support the position of the carrier in this respect.

Certainly the maximum that employe can recover is for the time actually spent in the operation of such machines. Only 5 to 10%, at the most, of this employe's time was devoted to the operation of these machines. However, as aforesaid, the claimant is not entitled to any recovery.

Since the employe James T. Meares became a blacksmith on December 6, 1945 there can be no recovery for any additional pay after that date.

OPINION OF BOARD: Based upon the facts and circumstances of this particular case, claim will be sustained for the difference between blacksmith and blacksmith helper rate of pay in accordance with Article XXV, Composite Service, Rule 1 of the Agreement for the period March 31, 1945 to December 5, 1945, both dates inclusive.

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 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 claim is sustained in accordance with Opinion.

AWARD

Claim sustained in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 15th day of October, 1947.