

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
THE DELAWARE AND HUDSON RAILROAD CORPORATION

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

(1) That the Carrier improperly compensated Joseph DeCarlo, Champlain Division, during the period May 16, 1946, to June 29, 1946, both dates inclusive, while he was performing the duties of a Welder's Helper;

(2) That Joseph DeCarlo be allowed the difference in pay between what he did receive at the Trackman's rate of 85½c per hour and what he should have received at the Welder Helper's rate of 92½c per hour during the period referred to in part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: During the period May 16 to June 29, 1946, Joseph DeCarlo, Trackman, Section L-6, Rouses Point, Champlain Division, was assigned to, and did work as Welder Helper with Welder Ray Tuttle.

The regularly assigned Welder Helper to Welder Ray Tuttle, at the time this claim arose, was rated at 92½c per hour.

Trackman Joseph DeCarlo was paid at his own trackman's rate of pay of 85½c per hour for his services rendered as Welder Helper on the dates referred to.

The Employees contended that DeCarlo should have been paid the Welder Helpers rate of 92½c per hour. The Carrier, recognizing the fact that the claimant had performed work of a higher class than trackman, offered to adjust this dispute by paying DeCarlo 87½c per hour. The Employees did not accept such an offer because of the fact that the regularly assigned Welder Helper to Welder Ray Tuttle, was rated at 92½c per hour.

The Carrier has refused to pay this claim at the 92½c rate.

The agreement in effect between the two parties to this dispute dated November 15, 1943 and subsequent amendments and interpretations are by reference made a part of this Statement of Facts.

POSITION OF EMPLOYEES: There can be no doubt but that Trackman De Carlo was assigned, and did perform work as a Welders' Helper while working with Welder Ray Tuttle on the dates in question.

The Carrier has conceded the above fact. To sustain this Statement, we quote below, a copy of a letter dated August 5, 1946, signed by W. J. H.

We, therefore, contend our claim just and reasonable, and request it be allowed.

CARRIER'S STATEMENT OF FACTS: Trackman Joseph DeCarlo was assigned to act as Welder Helper to the regular Welder. He was not experienced in this type of work but was used to cover a temporary assignment.

POSITION OF CARRIER: Rates of pay were negotiated between the Carrier and the Organization which established rates for Welder Helper during the period in question as $87\frac{1}{2}$ c per hour and $92\frac{1}{2}$ c per hour. There were three (3) such positions on the system; one at $87\frac{1}{2}$ c and one at $92\frac{1}{2}$ c per hour on the Pennsylvania Division; and one at $87\frac{1}{2}$ c per hour on the Susquehanna Division. Welder Helper position, which is the subject of this claim, was established at rate of $87\frac{1}{2}$ c per hour on the Champlain Division.

The Carrier was agreeable to pay the employee, so assigned, at the rate of $87\frac{1}{2}$ c per hour, which was in conformity with rate negotiated for other Welder Helpers, and in line with practice of paying the rate of pay for new or like positions, as was being paid other employees holding regular positions.

In the local handling the Committee based their claim on provisions of Rule No. 18, which reads as follows:

Case No. 1.48 M.W.

"Rule 18—Rates when filling other positions.

"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 Carrier in offering this employee the rate of $87\frac{1}{2}$ c per hour complied with requirements of Rule No. 18.

OPINION OF BOARD: During the period involved in this claim, claimant, a Trackman, was assigned to assist Welder Ray Tuttle in the performance of some welding work on the Carrier's Champlain Division. Mr. Tuttle, whose home station was on Carrier's Pennsylvania Division, was subject to being assigned to work on other divisions as service needs dictated. The applicable Agreement contains two rates for Welder Helpers now, $87\frac{1}{2}$ cents and $92\frac{1}{2}$ cents per hour. The helper generally assigned to assist Welder Tuttle when he worked on the Pennsylvania Division was holding a position paying $92\frac{1}{2}$ cents per hour. On the Carrier's entire system there are only three regularly established positions of Welder's Helper, two on the Pennsylvania Division, one at $92\frac{1}{2}$ cents per hour, the other at $87\frac{1}{2}$ cents per hour, and one on the Susquehanna Division at $87\frac{1}{2}$ cents per hour. No reason for explanation has been given for the existence of the two different rates for the same classification.

It is the Employees' contention that claimant should have been paid at the rate of $92\frac{1}{2}$ cents per hour as being the helper filling the position of helper to Welder Ray Tuttle. Employees cite Rule 18 (Composite Service) in support of their position.

Carrier contends that claimant is entitled to no more than the rate of $87\frac{1}{2}$ cents per hour which is in conformity with the rate negotiated for Welder Helpers and in line with the practice of paying the same rate of pay for new or like positions, as being paid employees holding regular positions.

We have been cited no Awards of this Board on factual situations analogous to that involved in this dispute. The situation herein presented is an anomalous one, where Maintenance of Way Agreements are involved. In the absence of a step rate rule there appears to be little logical basis for differing rates in Welder Helper positions. The contention of the Employees, in effect, would establish as the reason for the higher rate, the factor of helping a particular individual welder. We do not consider that contention as being tenable. The keystone of rating provisions in collective bargaining agree-

ments is that positions, not employees, are rated. Ray Tuttle does not receive a Welder's rate because he is Ray Tuttle but because he is filling a Welder's position. By the same token, his helper does not receive the Welder Helper's rate because of the name of the individual whom he is assisting but because he is filling the position of Welder Helper. Should Ray Tuttle be retired, discharged, promoted or changed in his assignment, the rate of the position of Welder Helper would be unaffected and the incumbent of the 92½ cents per hour position would continue to receive that rate. Hence, the resolution of this dispute is in no way affected by the factor of helping a particular individual in the Welder classification. We are, therefore, left with the problem of determining what is the proper rate for a man assigned to Welder Helper's work on a division where there is no regularly established position of that class, when there are two differing rates for that classification on the system. In providing for two differing rates without indicating when either will apply, it is patent that there is a resulting ambiguity in the Agreement. We must, therefore, look to outside evidence to determine the intent of the parties. There being no other evidence from which this intent can be determined, the practice of the parties is controlling. The record clearly establishes that when Ray Tuttle was assigned to work off his home division, he was assisted by a Trackman recruited at such points and that the practice has been to pay such employe at not more than lower of the two rates set up in the Agreement. We are unable, therefore, to come to any other conclusion than that the 87½ cent rate is the proper one to apply in this instance. Inasmuch as the Carrier has admitted the violation, contesting only the question of the proper rate, our Award will be to sustain part (1) of the claim in its entirety and part (2) to the extent of allowing the difference in rate of pay at the Welder Helper's rate of 87½ cents per hour.

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 Carrier violated the Agreement.

AWARD

Claim sustained to extent indicated by Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 28th day of March, 1950.