

Award No. 5566

Docket No. MW-5445

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Alex Elson, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

GULF, MOBILE AND OHIO RAILROAD COMPANY

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

(1) That the Carrier violated the effective agreement when they failed to allow Section Foreman W. P. Parker, Canal Yard, New Orleans, La., the agreed to special allowance customarily given to Section Foremen assigned to territories where no houses are furnished;

(2) That Section Foreman W. P. Parker be allowed \$10 per month, retroactive to April 1, 1950, for each month that no house was furnished for the use of the Section Foreman at Canal Yard.

EMPLOYES' STATEMENT OF FACTS: The controlling agreement provides that when company houses are available they may be furnished to section and yard foremen. It further provides that where houses are untenable, or where houses are not furnished, line foremen will be allowed \$10 per month and yard foremen \$5 per month, in addition to the regular monthly salary received when houses are furnished.

No house rent has been paid to the Foreman on Canal Yard Section, New Orleans, since the execution of the agreement, effective June 1, 1942.

Under date of May 31, 1950, the Brotherhood's General Chairman, Mr. M. C. Plunk, filed claim in favor of Section Foreman W. P. Parker, Canal Yard, New Orleans, La., requesting that Foreman Parker be paid in the amount of \$10 per month because company house was not furnished in line with the provisions of Rule 16.

The Section Foreman at Canal Yard receives a basic monthly salary of \$260.17 per month (Line Section Foreman rate of pay).

Claim was declined.

The agreement in effect between the two parties to this dispute, dated June 1, 1942, and subsequent amendments and interpretations are by reference made a part of this Statement of Facts.

would be less than at other yards because of "... the fact that Canal Yard was a very small yard ...".

Had the parties to this dispute at any time in the past considered the Claimant as a line foreman, as that term is used in the above-quoted Rule 16 (b), they have had many opportunities to indicate such an intention. However, the contrary is true. Throughout the correspondence between the parties in connection with this dispute, the Claimant has been referred to as a yard foreman.

The Carrier is of the opinion that it will be evident to the Board, from a review of the action of the parties to this dispute, that it is and has been the intention to classify the Claimant as a yard foreman within the meaning of the above-quoted Rule 16 (b), and that under this proper classification he is entitled to \$5.00 per month when a house is not furnished him.

(Exhibits not reproduced.)

OPINION OF BOARD: This is a joint submission involving the application of Rule 16 of the agreement. Rule 16(a) provides that when company houses are available, they may be furnished to section and yard foremen. Rule 16(b) covers the situation applicable in this case. It reads as follows:

"Where houses become untenable, or where houses are not furnished, line foremen will be allowed ten dollars (\$10.00) per month and Yard Foremen five dollars (\$5.00) per month in addition to regular monthly salary allowed when house is furnished."

It is admitted that the Carrier has not furnished a house to Claimant nor paid house rent to him since the execution of the agreement in June 1, 1942. Claim was filed on May 31st, 1950. Carrier has offered house rent of \$5.00 a month, effective April 1, 1950. The Organization agrees to accept the effective date of April 1, 1950, but claims \$10.00 a month.

The Carrier bases its position on the contention that Claimant is a yard foreman and not a line foreman. Claimant is section foreman for the Canal Yards at New Orleans, Louisiana. The geographic location of the Canal Yards and its function and general character is that of a yard. The Organization in its correspondence with the Carrier has referred to it as a yard.

However, this conclusion does not dispose of the claim. Section 16(b) merely provides additional compensation to the employees involved. We must look to the intent of the parties in determining why a differential rent rate is found under Section 16(b). It is agreed that yard foremen were given the lower rate of \$5.00 monthly because their compensation was generally higher than that of line foremen. When the 1942 agreement was entered into, the Organization claims, and the Carrier does not deny, that the Carrier refused to agree to a yard rate for the position in question, but contended that the character of the position was comparable to that of a line section foreman and that the line section foreman's rate was therefore applicable. The Organization acceded to this contention and the position in question was given the wage of a line section foreman.

For purposes of determining his pay, Claimant has since been treated as a line foreman, and his pay has been listed in the agreement in the same bracket with other line foremen. Since the issue is solely one of pay, we do not believe that the Carrier should now be permitted to reverse its position and seek to apply a rental applicable to the higher rated position. Accordingly, we believe that the claim has merit.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That both parties to this dispute waived oral hearing thereon;

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 agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 19th day of November, 1951.