

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Dudley E. Whiting, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTANANCE OF WAY EMPLOYES

CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY

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

(1) That Oxwelder Cleo Knight, who, while employed as a Section Foreman at Hoopeston, Illinois, was required to pilot locomotives around the Wye at Hoopeston, Illinois on December 8, 1944 and on subsequent dates thereto, should have been paid on the same basis as would have been paid to a conductor for similar piloting services;

(2) That Former Section Foreman Cleo Knight should now be compensated for the difference in pay rate received at the Section Foreman's rate of pay and what he should have received if properly paid in accordance with the provisions of the Carrier's agreement with the Order of Railroad Conductors for each time he was called upon to pilot locomotives as referred to in part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: Mr. Cleo Knight is presently employed as an Oxwelder by this Carrier having previously been employed by the Carrier as a Section Laborer and Section Foreman, respectively. All positions referred to are governed by the provisions of the Agreement between this Carrier and The Brotherhood of Maintenance of Way Employes. Mr. Knight progressed from Section Laborer to Section Foreman to Oxwelder by virtue of his accrued seniority with this Carrier.

Mr. Knight was the regular assigned section foreman at Hoopeston, Illinois during the period involved in this dispute, and we shall hereafter refer to the claimant's classification as that of a section foreman throughout this submission rather than to his present classification as an Oxwelder.

There is located at Hoopeston, on Foreman Knight's section, a Wye which is frequently used by the Nickel Plate Railroad in turning its locomotives. When so used, the Chicago and Eastern Illinois Railroad requires that a pilot conductor accompany these Nickel Plate engines around the Wye.

Because of Foreman Knight's familiarity with the Carrier's tracks and switches in and around this Wye, the Carrier has, on and subsequent to December 8, 1944, used Foreman Knight in the capacity of a pilot conductor.

spirit and intent of the Railway Labor Act. The instant case is not one where retroactive payments prior to date of protest is properly allowable. As stated in Award No. 4281—"Penalties are prescribed as a means of securing the enforcement of agreement provisions; not as a technical basis for the collection of unreasonable and excessive claims."

This purpose was accomplished by the decision contained in Award No. 5095. The Carrier paid the considerable penalty there provided, and has applied the agreement accordingly since. To permit Petitioner to now initiate claims for similar occurrences prior to the date of Award No. 5095 will not have the effect of securing enforcement of agreement provisions, but will only serve as a "technical basis for the collection of unreasonable and excessive claims." The claim should be denied accordingly.

Carrier affirmatively states that all matters contained herein have been handled with the Employee's Representatives.

(Exhibits not reproduced)

OPINION OF BOARD: In Award No. 5095 we held that the Carrier's practice of using a section foreman in connection with the movement of locomotives around a wye was a violation of the agreement and sustained pay claims subsequent to the date of protest, June 29, 1947. That award was dated November 21, 1950. This claim was first presented to the Carrier on January 24, 1951, and involves the same claimed violation at the same location for the period December, 1944 to January, 1946.

We have repeatedly held that acquiescence in a practice contrary to a rule does not effect a change in the rule but does act as a bar to retroactive claims. We have also frequently held that parties may not sleep on their rights and that we will not entertain stale claims. For those reasons the claim is without merit.

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 agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 16th day of February, 1954.