

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

H. Raymond Cluster, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee, Brotherhood of Railroad Signalmen of America, on the Pennsylvania Railroad that:

(1) The Carrier violated the agreement in assigning a rate to a new position in the Eastern Division Seniority District at \$5.00 less than the rates paid to all other similar positions in the District.

(2) Signal Foreman J. W. Bayer be allowed \$5.00 for each month he held this position and was paid at the lower rate.

EMPLOYES' STATEMENT OF FACTS: Effective November 1, 1950, the main line of the Toledo Division from Division Post (Eastern Division) to Detroit, Mich., became a part of the Eastern Division. The remainder of the former Toledo Division became a part of the Columbus Division. The part of the former Toledo Division which became a part of the Eastern Division is the part relevant to this dispute.

Pursuant to the Carrier's determination to change the Eastern Division to include a portion of the former Toledo Division as well as transferring a part of the Toledo Division to the Columbus Division, an agreement was negotiated on May 24, 1951, to conform with and make necessary exceptions to Section 5(a) of the June 1, 1943 T. & S. Agreement. A copy of the May 24, 1951, agreement is attached and identified as Brotherhood's Exhibit No. 1.

A new position of Foreman—T. & S. Camp Train, on the part of the Toledo Division which was absorbed by the Eastern Division was advertised on October 20, 1951, Bulletin No. 20, rate of pay \$446.27 per month. This position was assigned to the claimant, Mr. J. W. Bayer, on notice dated November 14, 1951.

The salary of \$446.27 is \$5.00 less than the salary allotted to comparable positions of Foremen T. & S. on the Eastern Division under the provisions of Article 5, Section 1 (g).

Attached herewith is copy of a Joint Submission covering the controversy, which is identified as Brotherhood's Exhibit No. 2.

amended, by reason of the unreasonable delay in progressing such claims to your Honorable Board.

Therefore, the Carrier respectfully submits that your Honorable Board should deny the claim of the Employees in this matter.

All data contained herein have been presented to the employe involved or to his duly authorized representative.

(Exhibits not reproduced.)

OPINION OF BOARD: Article 5, Section 1(g) of the current agreement between the parties reads: "The following monthly rates are applicable to the positions of inspector, assistant inspector, foreman and assistant foreman at the locations hereinafter listed:"

There then follow three pages of tabular listings, those pertinent to this case reading as follows:

Division	Headquarters	Position	Monthly Rate
Eastern	Camp Train	Foreman T&S	\$410.58
Columbus	Camp Train	Foreman T&S	405.58
Toledo	Camp Train	Foreman T&S	405.58"

It can be seen from this table that the rate for Camp Train Foreman T&S on the Eastern Division is \$5.00 per month more than for the similar positions on the Columbus and Toledo Divisions.

Effective November 1, 1950, the Carrier eliminated the Toledo Division by dividing the territory formerly included thereunder between the Columbus and Eastern Divisions. At that time, there were two camp trains working on the Toledo Division, Camp Trains "A" and "B". After the elimination of the Toledo Division, these two camp trains continued to work the same territory to which they had been assigned, Camp Train "A" working on what became designated as the Toledo Branch of the Eastern Division and Camp Train "B" working on the Sandusky Branch of the Columbus Division. The employes on both camp trains continued to receive the same rates of pay after the change as they had received before.

As a result of the change, the parties negotiated an agreement on May 24, 1951 to deal with problems raised as to the seniority status and rights of employes affected by the change; however it does not appear that there was any negotiation as to rates on account of the change. No modification of Article 5, Sect. 1(g), quoted above, was made.

On October 25, 1951 Carrier bulletined positions on a new Camp Train "C", assigned to install flashing light signals and short arm gates at Carrothers, Ohio, a point which before the change was in the Toledo Division, and subsequent to the change was in the Toledo Branch of the Eastern Division—the same branch as Camp Train "A". The rates of pay for the positions on this Camp Train "C" were bulletined at the rates set forth in the Agreement for the Toledo Division.

Claimant was assigned to the job of Foreman T&S on Camp Train "C" and worked in that position until February 18, 1952, on which date the train was abolished upon completion of the work to which it had been assigned. The claim is for an additional \$5.00 for each month claimant held the position.

Claimant relies upon Article 5, Section 9(b) of the Agreement, which reads:

"When a new position is created the rate of pay for such position shall be fixed in conformity with rates of pay in existing

positions in the seniority district which involve similar work, duties and responsibilities."

The apparent contention is that with the elimination of the Toledo Division, the only rates of pay to be considered are those listed in the Agreement for the Eastern Division. Since the rate listed for Camp Train Foreman T&S in the Eastern Division is \$5.00 per month more than the rate paid to Claimant, he is entitled to the difference.

Carrier contends that the agreed-upon rate for Camp Train Foreman T&S at the location involved is the rate shown in the Agreement for the Toledo Division; and that the change in divisions did not affect this rate. Further, Carrier argues that Section 9(b) of Article 5 is not applicable to this situation, but if it should be found applicable, the rate set is still the proper one since it is the same as that on Camp Train "A", which is the most similar position in the district.

It is clear from the record that the decision to change the divisions was made unilaterally by the Carrier—it was not negotiated with the Brotherhood. Once the decision was made, however, certain provisions of the already existing collective bargaining agreement were affected by it. As the Brotherhood puts it in its submission: "Pursuant to the Carrier's determination to change the Eastern Division to include a portion of the former Toledo Division as well as transferring a part of the Toledo Division to the Columbus Division, an agreement was negotiated on May 24, 1951, to conform with and make necessary exceptions to Section 5(a) of the June 1, 1943 T. & S. Agreement." The Section referred to deals with seniority and the May 24, 1951 agreement also deals exclusively with seniority; it makes clear how the seniority provisions of the 1943 Agreement are to be applied to the employees affected by the change.

No such negotiation or agreement took place as to the effect of the change upon pay rates, if any. We are left with an agreement which provides pay rates under the heading of a Division which no longer exists. In the absence of an agreement, similar to the May 24, 1951 agreement, modifying these rates, it cannot be said that they have been superseded or eliminated. Indeed, there has been no objection by the Brotherhood to the continued application of the Toledo Division rates to the T&S Foreman of Camp Train "A". Its contention is actually limited to the proposition that all new positions must be set at the Eastern Division rate. It is therefore accepted by both parties that despite the elimination of the Toledo Division, the Camp Train T&S Foreman rate listed thereunder in the Agreement is still applicable to Camp Train "A".

Assuming, without deciding, that Section 9(b) is applicable here, the question is whether that section supports Claimant's view that the proper rate to be applied to new positions must be the rate listed for them under the heading of Eastern Division. In our view, it does not. Claimant apparently construes the phrase "existing positions in the seniority district" to mean only positions listed in the Agreement under Eastern Division. However, the plain meaning of the phrase would include also the position of the T&S Foreman on Camp Train "A". It is not disputed that this position exists, that it is within the Eastern Division and that the rate is the same as the rate paid to Claimant. Claimant asserts that the positions in the seniority district which involve similar work, duties and responsibilities are those of Foreman, T&S, Canton and Foreman, T&S, Camp Train, listed under the Eastern Division. However, no evidence appears in the record as to the nature of the duties of either of these positions, as compared with the duties of the position in question or the Foreman position on Camp Train "A". Neither does it appear how many camp trains are assigned the Eastern Division other than Camp Train "A" or where they are located. On this state of facts, it cannot be said that Claimant has demonstrated that the work, duties and responsibilities of the positions at Canton or on camp trains other than Camp Train "A" in the Eastern Division are any more "similar" to

those of the position in question than the work, duties and responsibilities of the Camp Train "A" position. In fact, in view of the geographic proximity of Trains "A" and "C", it would be reasonable to assume more similarity between them.

Since the evidence does not show a violation of either Section 1(g) or 9(b) of Article 5 of the Agreement, the claim must be denied.

In view of the fact that we have concluded that the claim cannot be supported under Section 9(b) on the facts of this case, we find it unnecessary to resolve the question raised by the Carrier as to its applicability.

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: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois this 27th day of July, 1956.