

Award No. 12469
Docket No. MW-11912

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Joseph S. Kane, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
LEHIGH AND NEW ENGLAND RAILROAD COMPANY

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

(1) The Carrier violated the effective Agreement when, on March 12 and 13, 1959, it required Mr. John Rumbold to perform the duties of a B&B Helper and failed and refused to compensate him at the B&B Helper's rate of pay for such service.

(2) Because of the violation referred to in Part (1) of this claim, Mr. John Rumbold be allowed the difference between what he received at the B&B Laborer's rate and what he should have received at the B&B Helper's rate for service rendered on March 12 and 13, 1959.

EMPLOYEES' STATEMENT OF FACTS: On March 12 and 13, 1959 the claimant, who has established and holds seniority in the Bridge and Building Sub-department, was assigned to and required to perform the usual and traditional duties of a Bridge and Building Helper at Pen Argyl, Pennsylvania.

Specifically, the B&B Helper's duties performed by the claimant consisted of checking the stoker fired stationary heating plants in the boilerhouse and M. of Way shop at Pen Argyl, servicing maintenance of way trucks, i.e., replenishing the gas and oil, fitting radiators and changing tires if necessary.

The Carrier instead of compensating the claimant at the B&B Helper's rate compensated him for such service at the B&B Laborer's rate of pay.

Consequently, the subject claim was presented and handled in the usual and customary manner on the property, but was declined at all stages of the appeals procedure.

The Agreement in effect between the two parties to this dispute dated December 1, 1942, together with supplements, amendments, and interpretations thereto is by reference made a part of this Statement of Facts.

Carrier, therefore, respectfully requests that this claim be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The record reveals that the Claimant a B&B Helper was assigned for two days March 12 and 13, 1959 to work in the place of a B&B Laborer who was ill. The Claimant was paid the laborer's rate of pay and contends according to Rule 7(u) that he should be paid the helper's rate of pay. Rule 7(u) in its pertinent parts reads as follows:

" . . . but if required to fill temporarily the place of another employee receiving a lower rate, his rate will not be changed."

Thus we are of the opinion that the contention of the Claimant is supported by the record and Rule 7(u).

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 violated. That the Claimant should be paid the difference in pay between the helper's rate and laborer's rate for two days March 12 and 13, 1959.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of April 1964.