



Award Number 17606

Docket Number MW-18285

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Don Gladden, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY**

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

- (1) The Carrier violated the Agreement when, effective April 1, 1968, it reduced the rate of pay of Frog Repairers—welding by failing to maintain the five (5) per cent increase which became effective January 1, 1967, and also failed to maintain the two and one-half (2 1/2) per cent increase which became effective January 1, 1968. (System File A-9178/3007-3).
- (2) The Carriers' Frog Repairers—welding be reimbursed for the monetary loss suffered because of the violation referred to within Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: Prior to the consummation of the January 13, 1967, National Agreement, the rate of pay for a Frog Repairer—welding was \$2.9388 per hour; for a Frog Repairer (non-welding) the rate was \$2.8788 per hour.

The rates of all Maintenance of Way employees were increased five (5) per cent retroactive to January 1, 1967, and a two and one-half (2 1/2) per cent became effective on January 1, 1968, in accordance with the provisions of the aforementioned agreement which, insofar as it is pertinent hereto, reads:

"ARTICLE I—WAGE INCREASE

Section 1. Effective January 1, 1967, all hourly, daily, weekly, monthly, and piece-work rates of pay in effect on December 31, 1966, for employees covered by this agreement will be increased in the amount of 5 per cent applied so as to give effect to this increase in pay irrespective of the method of payment. The increase provided for in this Section 1 shall be applied as follows:

(a) Hourly Rates—

Add 5 per cent to the existing hourly rates of pay.

* * *

Section 2. Effective January 1, 1968, all hourly, daily, weekly, monthly and piece-work rates of pay in effect on December 31, 1967, for employees covered by this Agreement will be increased in the amount of 2 1/2 per cent, applied so as to give effect to

CARRIER'S STATEMENT OF FACTS: The Carrier and the Petitioning Organization are parties to National Agreements entered into January 13, 1967 and May 17, 1968 which provided, among other things, for the application of the following percentage wage increases to all hourly, daily, weekly, monthly and piece-work rates of pay of covered employees:

January 1, 1967	5	%
January 1, 1968	2 1/2	%
July 1, 1968	3 1/2	%
January 1, 1969	2	%
July 1, 1969	3	%

Frog repairers receive a 6¢ hourly differential for welding. The Carrier properly applied the January 1, 1967 and January 1, 1968 percentage wage increases to the hourly rate of pay of frog repairers, but it also inadvertently applied such percentage wage increases to the 6¢ hourly welding differential until the oversight was detected and corrected April 1, 1968, and hence this dispute.

The hourly rate of pay for frog repairers as of January 1, 1969 is \$3.3932, and the welding differential of 6¢ per hour is applied to that rate.

(Exhibits not reproduced)

OPINION OF BOARD: The sole question presented to this Board is whether or not the parties have established a basic pay rate for the classification "frog repairer—welding" rather than a provision for paying frog repairers who do welding a differential for the time welding is performed. In an agreement dated December 8, 1941, the parties agreed as follows:

"45. When frog repairer uses oxweld torch as much as one hour and not more than four hours in any one day he should be paid 5¢ additional per hour for actual time welding device used. Where welding device is used more than four hours in any one day, frog repairer should be paid 5¢ additional per hour for the entire time. Same differential to be allowed for operating rail slotting or rail grinding machines."

In 1949, pursuant to the 40-hour work week agreement a 20% increase was applied to both basic rates and differential compensation. After that time, frog repairers who did welding received 6¢ per hour more than frog repairers who did no welding. However, sometime after the agreement of 1941, the Carrier published (and the Organization approved) "basic rates" which classified "frog repairers—welding" and provided a "basic rate" for "frog repairers—welding".

Effective January 1, 1967, the Carrier raised the rates of pay for "frog repairers—welding" and applied the increase to their entire compensation. On January 1, 1968, the Carrier again applied the wage rate increase to the total compensation for "frog-repairers—welding".

On April 1, 1968, the Carrier reduced "payroll checks" due claimants so as to eliminate the application of the rate increases on January 1, 1967, and January 1, 1968, as they applied to the 6¢ difference between "frog repairers—welding" and "frog repairers—non-welding".

There is no dispute that the rate increases in question are not due on "differentials" but only "basic rates".

The Organization contends that the action on the part of the Carrier in publishing "basic rates" for many years establishes such a basic rate and the Carrier, therefore, must apply the wage increases to the full rate published by the Carrier.

The Carrier, however, contends that a "differential" was established by the parties pursuant to paragraph 45 quoted above and that any action on their part in classifying a basic rate of "frog repairer--welding" and the payment of the wage increases of January 1, 1967, and January 1, 1968 were clerical errors and the agreement was not changed thereby.

Paragraph 45 of the December 8, 1941 agreement specifically referred to a "differential" compensation for frog repairers when using welding devices.

There is nothing before this Board showing that the parties undertook negotiations to change that agreement.

Absent a showing of detrimental reliance by the other party to the agreement, it is well established that errors in application of the agreement do not change or alter the clear and unambiguous terms of such agreement.

While the establishment of new classifications and basic rates of compensation are proper subjects for negotiations between the parties, there is no showing that the parties ever discussed or negotiated a change from the "differential" provided in the 1941 agreement so as to establish a new classification and basic rates for the employees made the subject of this claim and we, therefore, conclude that the publication of "basic rates", by the Carrier, though approved by the Organization, did not alter or modify the terms of the 1941 agreement and, there being no showing of any detrimental reliance by the Organization or the employees involved upon the error of the Carrier, the Carrier was privileged to make the correction of the payroll on April 1, 1968.

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

That the parties waived oral hearing;

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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of December 1969.