

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **20257**
Docket Number **MW-20114**

Frederick R. Blackwell, Referee

PARTIES TO DISPUTE: (Brotherhood of **Maintenance** of Way **Employees**
(The **Texas** and Pacific Railway Company

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

(1) The **Carrier** violated the **Agreement** and the National Railroad Labor Act **when** it arbitrarily and unilaterally reduced the rate of pay of the position of for- on B&B Gang No. 301 (System Files K-310-84 and K-310-85).

(2) For- C. C. **Mudford** and/or his successor or successors be allowed the difference between what was paid at the rates unilaterally applied by the Carrier and what should have been paid at the contractual rates for all time worked as for- of **B&B** Gang No. 301 since March 26, 1971. (All wage increases effective during the life of this violation to be applied **and** paid for corresponding periods.)

(3) **Claimant** **Mudford** and/or his successor or successors be allowed six percent (6%) interest per **annum** on all monetary payments accruing as a result of **this** violation.

OPINION OF BOARD: In 1951 the pay rate of a position presently designated as "For- B&B **Gang 301**" was fixed at a rate higher than the rate applicable to other For- positions in the B&B Department. (Schedule of Rates of Pay, page 33 of the Agreement effective **September 1, 1949**). Originally, the **higher** rated position was entitled "For- Pile Driver No. **1**". The position's title was changed to "For- **B&B** Gang No. **31**" in 1964 and subsequently to the present title of "**Foreman B&B** Gang **301**." In **March** of 1971 a temporary vacancy occurred in the position and Claimant occupied the vacancy on March 26, 1971. Thereafter, the Carrier instructed the Claimant to reduce the pay rate of the position, whereupon the Claimant's General Chairman advised him to report the **higher** rate and, if **not** allowed, claim and protest would be made. On April 21, 1971, the Carrier issued a bulletin advertising the existence of a new position for one For- B&B Gang 301 at a **lower** pay rate than the rate previously applicable to the position. On April 22, 1971, the Carrier abolished the position of **B&B Foreman** Gang 301, to which the higher rate applied, due to the retirement of the **incumbent** of the position. The Claimant bid in the new position carrying the reduced rate and then made **claim** for the difference between the reduced rate and the previous, higher rate.

The **Employees** contend that Carrier's actions constitute a unilateral reduction in a negotiated pay rate, which, in **turn**, constitutes a violation of the Agreement. The Carrier's defense is that Gang 301 **was** formerly a pile driver gang, but that the pile driver operation, requiring the higher rate, has been eliminated, thereby automatically reducing the rate to that of B&B For- on a gang without the pile driver. The details of this defense are reflected in the following extract from a January 11, 1972 letter of Carrier's Director of Labor Relations:

"When this **matter** was investigated, it was developed that an error was made in our rate sheets which were issued subsequent to May 1, 1962. The rate sheets for May 1, 1962 on the T&P Railway show the B&B For- rate to be \$468.01 per month, and after updating through April 1, 1971, the rate **is** \$742.82 per month. **The** rate sheets for May **1**, 1962 also List a position of For- Pile Driver No. 1 rated at \$514.39 per month, effective May **1**, 1962, and after updating through April 1, 1971 the rate is \$802.33 par month.

It **appears** the confusion relating to the rates occurred after June 16, 1963 when pile driver No. 1 was eliminated and former Pile Driver For- **J. B. Henderson** remained as B&B For- with Gang No. 31, **later** to become Gang No. 301 without a pile driver. **However**, Mr. Henderson continued to claim and was erroneously allowed the pile driver for- rate even though the pile driver had been eliminated. The error was not discovered by the Carrier until after the National Agreement of February 7, 1965 was made and the former District Engineer permitted **Mr. Henderson** to retain the pile driver foreman rate as his protected **rate** so long as he remained with **Gang** No. 301. The rate sheets **which were** subsequently issued failed to List the Pile Driver For- title and instead Listed the pile **driver** for- rate as B&B for-, thereby reflecting **an** incorrect rate for **B&B** for-.

After **Mr. Henderson** retired, the **B&B** Foreman position on **Gang** No. 301 **was** properly rated in Bulletin No. 3 as \$742.82 because the Pile Driver For- rate of \$802.33 does not apply and has not applied to Gang No. 301 since the elimination of pile driver No. **1** in June, **1963.**"

The issue drawn by the foregoing, and the **whole** record, is whether the agreement between the parties conditioned the higher rate of pay of the position in question **upon** a pile **driver** being involved in the **work** of Gang 301. The Carrier, in laying out the history of the involved position, presents **a** plausible explanation of why the higher **rate** of pay should have **been** tied to the use of a pile driver; however, the Carrier must point to some supportive agreement provision, to go along with its explanation, and this the Carrier has not done. The mere listing of the position in 1951 as "For- Pile Driver No. **1**" does not signify the parties intent to condition the **higher** pay rate upon the involvement of a pile driver. Further, the schedules of **pay** rates in the record before us **are** totally silent on the reason for the higher pay rate and the Carrier has not pointed to language elsewhere in the **agreement** which would indicate that the higher rate was tied to a pile driver. Nor has the Carrier offered any parole evidence to **prove** that such was agreed to by the parties in a collateral agreement, either oral or written. Thus, we have before us an agreement which contains an agreed rate of pay for the position of **B&B** For- of Gang 301, but **which** contains no mention of the occurrence of any event which, as Carrier **says**, "automatically" reduces the rate. Therefore, we can but conclude that Carrier's unilateral reduction of the rate of the position of **B&B** For- of Gang 301 violated the agreement and **we** shall sustain paragraphs 1 and 2 of the claim. Award Nos. 1296 and 11368. We have carefully studied the Awards **cited** by **Carrier**, but find them not pertinent to the facts of this case.

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 apprwed June 21, 1934:

That this Division of the **Adjustment Board** has jurisdiction war the dispute involved herein; and

That the Agreement was violated.

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Claim sustained in respect to paragraphs 1 and 2, but
paragraph 3 is not allowed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *A. W. Paulson*
Executive Secretary

Dated at Chicago, **Illinois**, this 31st day of May 1974.