

Award No. 5052

Docket No. MW-4918

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Peter M. Kelliher, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

**THE PITTSBURGH & WEST VIRGINIA RAILWAY
COMPANY**

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

(1) That the Carrier violated the provisions of the effective agreement when it laid off Foreman Victor Trunzo on March 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 26, 28, 29, 30 and 31, 1949;

(2) That the Carrier violated the provisions of the effective agreement when it laid off Cooks Adam Trinkala and C. W. Allen on March 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 26, 28, 29, 30 and 31, 1949;

(3) That the above listed employees be reimbursed eight (8) hours per day at their straight time rate of pay because of this violation of the agreement.

EMPLOYEES' STATEMENT OF FACTS: Effective March 15, 1949, the Carrier temporarily laid off Paint and Masonry Foreman Victor Trunzo and Cooks Adam Trinkala and C. W. Allen.

The above referred to employees were not returned to service until April 4, 1949, nor were they paid for the time they were held out of service.

The claimants involved in this instant case are compensated on a monthly basis.

The Agreement, effective December 14, 1944, and all subsequent amendments and interpretations, between the parties to the dispute is by reference made a part of this Statement of Facts.

POSITION OF EMPLOYEES: Prior to March 15, 1949, Paint and Masonry Foreman Victor Trunzo and Camp Cooks Adam Trinkala and C. W. Allen were employed in their respective capacities and were paid on a monthly basis. We are quoting below a Memorandum of Negotiation pertinent to the rates of the claimants in this instant case:

time of the claim. Some rule changes have been made since that time to conform with the 40-Hour Week Agreement.

(Exhibits not reproduced).

OPINION OF BOARD: Prior to March 15, 1949, Trunzo held the position of Foreman. Allen and Trinkala held positions as Cooks. The undisputed evidence is that when the Carrier furloughed these employees on March 15, 1949, they were not required to remain available and the Carrier had no way of knowing the length of the furlough. The Carrier has a right to abolish positions when work is not available. The claim is that the establishment of a monthly rate of pay makes the month the unit of employment and that the claimants are entitled to be paid for the full month of March, 1949, although they performed no work subsequent to the 14th of the month.

The applicable rules are Sections 9 and 15 of Article V:

"Sec. (9) Positions not requiring continuous manual labor such as lampmen and pumpers, will be paid monthly rate to cover all services rendered during their regular assigned eight (8) hours. If required to perform service on Sundays and holidays, or outside of the assigned eight hours, or on calls will be paid in accordance with Article V, Sections 5, 6 and 7. The hours of employees covered by this rule shall not be reduced below eight (8) hours per day for six (6) days per week.

"Camp cooks will be paid at the base rate of \$122.40 per month. When the gang served by the cook is working an eight (8) hour day the cook will receive two additional hours at time and one-half rate. Where the gang served is working nine (9) hours the cook will receive three (3) additional hours at time and one-half rate."

"Sec. (15) Employees whose responsibilities or supervisory duties require service in excess of the working hours or days assigned for the general force will be compensated on a monthly rate to cover all services rendered, except that when such employees are required to perform work which is not a part of their responsibilities or supervisory duties, on Sundays, or in excess of the established working hours, such work will be paid for on the basis provided in these rules in addition to the monthly rate. Section foremen required to walk or patrol track on Sundays shall be paid therefor on the basis provided in these rules in addition to the monthly rate.

"Foremen shall be compensated on the same overtime basis as the men supervised when the general force is required to work in excess of eight hours (8) per day."

The payment of a "monthly rate" does not establish a month as the unit of employment. The practice followed by the parties since the date of the agreement in situations where jobs were abolished supports the Carrier's interpretation.

In Award Number 4849 where the claim was that the employees were on a monthly basis and that the Carrier was required to pay "regardless of whether or not the Carrier uses these employees the entire month," the Board in denying the claim stated:

"The foregoing rule provides for paying the employees within it on a monthly basis. It is not a monthly guarantee rule. The collective Agreements with which we here deal are not contracts of employment as to time. The Carrier merely agrees to give all the work of a class to that class and fixes the rate of payment therefor. When there is no work of a position to be performed, the position may be abolished. This is what happened in the present case and claimant

was required to exercise his seniority and displacement rights. When he displaces because of force reduction, he takes the rate of the position he assumes. The rate of a position is paid only so long as there is work of the position to be performed. When the work of the position disappears, the Carrier can abolish the position without penalty. Specific guarantee rules may provide for a rate of pay based on other considerations, but we have no guarantee rule in the present case, nor a contract of employment for a definite period. There is no merit in the claim."

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. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 17th day of October, 1950.