

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 foreman on B&B Gang No. 301 (System Files K-310-84 and K-310-85).

(2) Foreman 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 foreman 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 "Foreman B&B Gang 301" was fixed at a rate higher than the rate applicable to other Foreman 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 "Foreman Pile Driver No. 1". The position's title was changed to "Foreman 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 Foreman 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 Foreman 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 Foreman 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 Foreman 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 per 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 Foreman J. B. Henderson remained as B&B Foreman 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 foreman 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 Foreman title and instead listed the pile driver foreman rate as B&B foreman, thereby reflecting an incorrect rate for B&B foreman.

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 Foreman 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 "Foreman 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 Foreman 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 Foreman 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 Employee involved in this dispute are respectively Carrier and Employee 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.

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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. Pauls
Executive Secretary

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