

PUBLIC LAW BOARD NO. 3539

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

versus

MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT

OF CLAIM: Claim of the System Committee that:

"Claim of Machine Operator T. Daniels, Red River Division, for the difference between the monthly rate of \$1,740.60 per month and the hourly rate of \$9.4914 for each and every hour compensated, including overtime beginning October 1, 1981, and continuing until the monthly rate is restored to his job as YST Operator, because the Agreement of October 7, 1959, and the General Duties Sixth and Seventh of the Railway Labor Act were allegedly violated.

FINDINGS:

The procedural issue raised by the Carrier is not discussed because this claim must be denied on the merits.

There is no dispute that before 1976 and subsequently there has been a negotiated hourly rate of pay for YST Operator, which under the Agreement could only be changed by the duly authorized representatives of the parties. Nevertheless, a District Engineer changed it to a monthly rated job in 1976 and such change was not noticed by the Accounting Department until 1981, when the hourly rate was again made effective. This claim was filed thereon.

Regardless of how long practices which are inconsistent with the Agreement exist, they do not change the Agreement but remain revocable when discovered.

NRAB awards have held Carriers to be bound by actions of their agents in the conduct of their business but none have been cited and we know of no authority for the proposition that rates of pay can be changed by any Carrier agent other than the duly authorized representative therefor, which in this case is the Director of Labor Relations.

AWARD:

Claim denied.

LABOR LAW BOARD NO. 3539

*Dudley E. Whiting*  
Dudley E. Whiting - Chairman

*M. A. Christie*  
M. A. Christie  
Employee Member

*W. E. Naro*  
W. E. Naro  
Carrier Member