

(R-53-394-1)

AWARD NO. 14

CASE NO. 17

SPECIAL BOARD OF ADJUSTMENT NO. 280

PARTIES : The Brotherhood of Maintenance of Way Employes
TO :
DISPUTE : St. Louis Southwestern Railway Company

STATEMENT OF CLAIM:

"Claim of C. H. Beckwith for difference between track apprentice rate and MofW Helper rate while acting as Truck Driver from February 10, 1958, to March 7, 1958."

FINDINGS:

The employees state that the claimant is regularly assigned as a track apprentice and on the dates referred to in the claim, he was assigned to Steel Gang No. 2, which was laying rail in the vicinity of Malden, Missouri, and Piggott, Arkansas. He was assigned specifically throughout the day to drive a company-owned truck, transporting men and materials. Under Rule 2-12, for the services rendered by the claimant during the period referred to, he was paid at the track apprentice rate of pay, which is approximately 11.5 cents per hour less than what he should have been paid, which is the Maintenance of Way helper rate of pay.

The employees further state that under Rule 7-18, Composite Services, it is provided that employees working on more than one class of work on any day will be allowed the rate applicable to the character of work performed from the actual time assigned to the higher rate, if his rate is lower than the rate payable to the higher class of work. The carrier violated Rules 2-12 and 7-18 of the Agreement.

The carrier states that under Rule 2-13, it has agreed with the union that it may employ track apprentices on sections located at or near the headquarters of roadmasters, and that the classification of track apprentice is specifically excepted from the seniority and promotion rules of the existing Agreement with this organization; that the basic rate of pay for track apprentices would be five cents (\$.05) per hour (now six cents \$.06 an hour), in excess of the rate established for section laborers. Track apprentices shall take the place of, and perform the duties, of section laborers, or perform any other services in the Maintenance of Way Department that may be required by the section foreman or roadmaster under whom employed.

The carrier further states that Rule 7-18 of the effective Agreement provides that if an employee performs a preponderance of work for the day at the higher rated position, he is paid at the higher rate, but if he does not perform a preponderance of work at the higher rated position during the day, he is paid at his regular rate of pay.

From the evidence submitted to the Board, and from a careful reading of Rule 2-13 we find that under this Rule, track apprentices may perform any work under the Maintenance of Way agreement. However, if the track apprentices must be allowed the

Maintenance of way helpers' rate under Rule 2-12, the employees have failed in their evidence to show the number of hours that this claimant worked on the days of claim in the driving of the truck.

Rule 7-18 reads as follows:

"7-18. Composite Service.--An employee working on more than one class of work on any day will be allowed the rate applicable to the character of work preponderating for the day, except that when temporarily assigned by the proper officer to lower rated positions, when such assignment is not brought about by reduction of force or request or fault of such employees, the rate of pay will not be reduced.

"This rule is not to permit using regularly assigned employees of a lower rate of pay for less than half a work day period to avoid payment of higher rates. . . "

The employees state that under the second paragraph of Rule 7-18, the employee is paid at the higher rate of pay for the actual time consumed in the higher class of work during the day.

The Board finds that due to the fact that the employees have failed to show the actual time worked by the claimants on the days of claim in driving the truck, that they cannot be paid under Rule 7-18. Therefore, this claim will be denied.

AWARD:

Claim denied.

(s) Thomas C. Begley
Thomas C. Begley, Chairman

(s) A. J. Cunningham
A. J. Cunningham, Employe Member

(s) M. L. Erwin
M. L. Erwin, Carrier Member

Dated: May 18, 1960