

SPECIAL BOARD OF ADJUSTMENT NO. 541

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees
Erie Lackawanna Railway Company

STATEMENT OF CLAIM:

Claim in behalf of the following truck drivers in the Maintenance of Way Track Department on the Buffalo and Rochester Division:

E. Cruz	A. C. Schults
T. Baker	William Williams
J. Amatrano	J. Majewicz
A. M. Rodriguez	

and all other Truck Drivers who have operated automobile, bus or truck in accordance with Rule 1 Scope, third Note of our existing Agreement dated January 1, 1952, be compensated for the difference in what they received and what they would have received if they were properly compensated the prevailing Equipment Operator's rate of pay from August 1, 1969, until the condition has been corrected due to violation of Rule 1(a) Scope, third Note of the Agreement dated January 1, 1952.

The Carrier shall also pay the Claimants six percent per annum on the monetary allowance accruing from the initial claim date until paid.

FINDINGS:

It is Petitioner's position that truck drivers are entitled to the same pay increase that work equipment operators have received pursuant to the National Agreement of May 17, 1968. In support of that theory, it cites the third Note to Rule 1, the Scope Rule, of its Schedule Agreement of January 1, 1952, with Carrier. That Note reads as follows:

"Automobile-bus-truck drivers are section, extra gang and other Maintenance of Way laborers - Class 1, and equipment operators - Class 4, assigned to operate automobiles, buses and trucks in transporting employees and/or materials, etc., and will work in section or extra gangs while not operating automobile, bus or truck and shall be paid work equipment operator's rate."

The truck drivers mentioned in the Scope provision just quoted and work equipment operators were paid the same wage rate from January 1, 1952, until the National Agreement of May 17, 1968, was applied to Carrier's employees, at which time work equipment operators, unlike claimants, received a twelve cent hourly increase. The present dispute concerns that differential in pay.

The May 17, 1968 Agreement, to which both Carrier and the Organization are parties, expressly provides for that twelve cent increase in Article VII. Under that provision, the parties agreed that a classification and evaluation

fund equivalent to five cents per hour for each employee covered by the Schedule Agreement would be established and that adjustments in rates of pay would be made from that fund in recognition of skills, responsibilities and training, and to correct inequities.

Article VII then goes on to provide exactly how that fund will be applied. Its provision in that regard is as follows:

"(a) The rates of pay of employees reportable in ICC Reporting Divisions 29, 30, 31, 32, 33, 35, 38 and 40 shall be increased by the amount of twelve cents per hour effective July 1, 1968.

(b) The rates of pay of employees reportable in other ICC Reporting Divisions, except Reporting Divisions 34, 36, 37, 41, 42, 43, 102 and 103, whose hourly rates of pay as of March 31, 1968 were higher than the average straight-time hourly rate of pay in March, 1968 for the Reporting Division which on the individual railroad had the lowest average straight-time hourly rate of pay (determined by dividing the total straight-time compensation by the total number of straight-time hours for the month of March, 1968) among Divisions 29, 30, 31, 32, 33, 35, 38 and 40 shall also be increased by the amount of twelve cents per hour effective July 1, 1968.

(c) The increase provided for in paragraphs (a) and (b) above shall be in addition to the general increase provided for under Article I, Section 1 of this agreement, and shall be applied to all hourly, daily, weekly, monthly and piece-work rates of pay so as to give effect to this increase in pay irrespective of the method of payment."

That truck drivers are not within the Reporting Divisions specified in Article VII is undisputed. Petitioner nevertheless maintains that since work equipment operators' rates have been increased by the twelve cent factor, truck drivers must also be paid the total rate now received by work equipment operators in view of Rule 1's terms. We disagree.

At the time Article VII and the remaining provisions of the May 17, 1968 National Agreement were negotiated, the Schedule Agreement and all applicable wage rates were before and known to the parties. The Organization, no less than Carrier, agreed that an earmarked fund of a certain and definite amount would be available for Article VII increases and committed itself to the manner in which that fund would be distributed. Accordingly, Rule 1 of the Schedule Agreement was modified by mutual agreement to the extent that Article VII prescribed that work equipment operators, and not truck drivers, would receive a wage increase.

If Petitioner desired to maintain the uniform pay provisions for truck drivers and work equipment operators that existed at the time, it could have provided for that condition by appropriate language in Article VII or some supplemental agreement. Not only did it see fit not to include such a provision but in addition, together with Carrier, it carefully defined just who was entitled to the specific increase in question and determined how the fund would be exhausted.

The instant claim is without merit and will be denied.

AWARD: Claim denied.

Adopted at Cleveland, Ohio, October 16, 1974.

/s/ H. M. Weston
H. M. Weston, Chairman

/s/ R. A. Carroll
R. A. Carroll, Carrier Member

A. J. Cunningham, Employee Member