Award No. 959
Docket No. 891
2-C&EI-EW-'43

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee I. L. Sharfman when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 20, RAILWAY EMPLOYES' DEPARTMENT, A. F. OF L. (ELECTRICAL WORKERS)

CHICAGO AND EASTERN ILLINOIS RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: That Electrician Helper Francis Pate be compensated the difference between helper's rate of pay and craneman's rate of pay for work performed by scrap cutter operating overhead electric crane at reclamation plant during the absence of the regularly assigned crane operator.

EMPLOYES' STATEMENT OF FACTS: At Danville, Illinois, on April 29 and 30, and May 1, 2, 4, 5, 6 and 7, 1942, temporary vacancy created by illness of first shift crane operator at reclamation plant was filled by assigning a scrap cutter to operate the crane.

POSITION OF EMPLOYES: Under an agreement entered into between the carrier and the representatives of the employes on February 20, 1941, the following method was agreed upon in the filling of vacancies existing on overhead electric crane due to temporary absence of regularly assigned operators in locomotive machine shop, boiler shop and reclamation plant:

> "When a crane operator is off, an electrician helper, if available, will be used in his place. In the event an electrician helper is not available it will be permissible to use an electrician. However, if it becomes necessary to double any of the men over we would double the crane operators in preference to either an electrician or an electrician helper." (See Exhibits A—B—C submitted.)

This agreement permits the carrier to assign an electrician helper, an electrician, or double over a craneman to fill a temporary vacancy created by the absence of the regularly assigned craneman. In this instance the carrier did not take advantage of these agreed-to methods of filling such a vacancy, but assigned a scrap cutter employed in the stores department at the reclamation plant to perform the electrical work. (See Exhibits D—E—F—G—H, submitted.)

CARRIER'S STATEMENT OF FACTS: Francis M. Pate was born September 13, 1923; education, four years general high school; employed as electrician helper, first shift Oaklawn back shop, March 20, 1942; no previous railroad experience. When employed claimed to have worked approximately nine months as an attendant in a gasoline station.

or instructor. In other words, he actually operated the crane. Owing to the differences in opinions as to the qualifications of this man I made you the following proposal:

> That a check of the time book be made by yourself and a representative of the company from the time Mr. Pate entered the service to April 20, 1942, and if it could be shown that Mr. Pate had been paid crane operator's rate for two days in this period, or if it could be shown that he operated a crane unaccompanied for a period of two days up to April 20, 1942, I would accept this as an indication that he was sufficiently qualified to operate the crane at the reclamation plant and would allow the claim as presented for the period from April 20th until the crane operator was employed and put on the job; in other words, allow the claim for the time the crane operator from the back shop was used at the reclamation plant.

We are not willing to concede that Mr. Pate has any claim for the period the crane was operated by the newly employed crane operator, it being our position that it is the prerogative of the management to employ crane operator, or any other workmen, to fill vacancies when there are no furloughed employes in the classification in which the vacancy exists available.

This is in confirmation of the oral proposition made to you in conference Friday, November 6, 1942. We are still willing to dispose of the case in accordance with that proposal.

The general chairman acknowledged the above letter under date of November 11, 1942, as follows:

> This will serve to acknowledge your letter of Nov. 7, 1942, concerning case of Francis Pate, Electrician helper.
>
> I have read your letter with a great deal of interest and am sorry, but I cannot settle this case on the terms you have outlined and am therefore referring this entire case to the adjustment board for settlement.

The carrier is of the opinion that the claim as presented should be denied for the following reasons:

(1) Sustaining of the claim will restrict the right of management to hire new employes who are qualified to handle a particular job when no employe in that class is furloughed.

(2) Because of the youth, lack of experience, and lack of knowledge of crane operation possessed by this electrician helper at the time the vacancy on the scrap dock crane occurred.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon.

By the Memorandum Letter Agreement of February 20, 1941, it is expressly provided that "when a crane operator is off, an electrician helper, if available, will be used in his place." It is conceded by the carrier that

Electrician Helper Francis Pate was available when the temporary vacancy occurred on April 20, 1942, but there is disagreement as to whether he was qualified to operate the crane. It is proper to assume that reasonable qualification was a necessary prerequisite to his use. He was obviously qualified by May 1, since he actually operated a crane on that day and the day following. The claim as developed in the submissions and at the hearing goes back to April 29 and 30. The evidence is not convincing that he was lacking in qualification on those days. Since he received the craneman's rate of pay on May 1 and 2, since May 3 was a Sunday and not worked, and since he was off duty on May 6, the claimant should be compensated the difference between a helper's rate of pay and a craneman's rate of pay for the work he was entitled to perform in operating the overhead crane at the reclamation plant on April 29 and 30 and on May 4, 5, and 7.

AWARD

Claim sustained to extent indicated in above findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 20th day of October, 1943.