

NATIONAL RAILROAD ADJUSTMENT BOARD

Third Division

I. L. Sharfman, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
CENTRAL OF GEORGIA RAILWAY**

STATEMENT OF CLAIM.—

"Claim of Brotherhood of Maintenance of Way Employes of the Central of Georgia Railway that (a) Weed Burner Machines used by the Central of Georgia Railway should be manned by Operators taken from the Maintenance of Way Department, who were operating these machines prior to July 27, 1936 (when they were displaced by Locomotive Engineers), and (b) paid for any wage loss suffered by them on account of said displacement."

STATEMENT OF FACTS.—The following statement of facts was jointly certified by the parties:

"It has been the practice that weeds and grass growing between the rails of the tracks and immediately adjacent thereto be removed each summer, and until August 1918 the weeds and grass were removed with shovels and other hand implements by regular section or track gangs. In August 1918 a weed and grass destroying machine was constructed and used intermittently, which to a certain extent, took place of the old method. This was known as a Dean-Williams Weed Destroyer mounted on an ordinary flat car, with windlass operated wings equipped with perforated pipes for conveying live superheated steam from a locomotive properly equipped for furnishing such steam. The Weed Burner machine was operated by an Assistant Track Foreman and three trackmen, necessary for supervision and the raising and lowering of the distributor wings.

"In 1930 a more successful and efficient Weed Burner Machine had been perfected, known as the Fairmont Weed Burner, and one of these machines was purchased for experimental purposes. Three additional machines of this type were purchased during the year 1931. These machines consist of a crude oil burning device mounted on a gasoline propelled motor car. In place of steam, oil is used to generate a flame, destroying the weeds and grass. This machine is manned by an Operator whose duty it is to run the machine over the tracks and exercise general supervision over the entire operation; keep the time of all employes and make the necessary daily reports, etc., and an Asst. Operator whose duty it is to regulate the flame and raise and lower the wings while the machine is in operation.

"On May 25th, 1931, at a conference held in the office of the Chief Engineer of the Central of Georgia Railway, it was agreed between the Chief Engineer and the General Chairman of the Brotherhood of Maintenance of Way Employes that:

"Operators of various Roadway Machines, as Weed Burners, Weed Mowers, Discers, etc., would be filed by the bulletin method, and operated by Maintenance of Way employes. Rate of pay of \$162.50 per month for the Operator and \$90.00 per month for the Assistant Operator were agreed upon, and in accordance with this arrangement Operators and Asst. Operators for these machines were selected from the Maintenance of Way department and continued to operate them until July 27th, 1936, at which time they were displaced by Locomotive Engineers in compliance with Decision No. 525, Docket 1239, First Division, National Railroad Adjustment Board, dated August 22nd, 1935, copy of which is attached hereto and marked Exhibit No. 1."

POSITION OF EMPLOYEES.—The employes contend that by the agreement made at the conference of May 25, 1931, weed burners were to be manned by maintenance-of-way employes under rates of pay for this work there established, citing the memorandum of this conference as follows:

"CENTRAL OF GEORGIA RAILWAY

"H. D. POLLARD—RECEIVER

"Memorandum of conference held in the office of Chief Engineer, Monday, May 25th, 1931.

"Present: Mr. W. K. Goodwin, General Chairman, Brotherhood M. of Way Employes; Mr. C. E. Weaver, Chief Engineer; Mr. C. H. Pittman, Asst. Chief Clerk.

"The question of providing Maintenance of Way employes for operating the various Roadway Machines, such as Weed Burners, Weed Mowers, Discers, etc., was discussed at some length, and it was finally decided by Mr. Weaver and General Chairman Goodwin that these positions would be filled by the bulletin method, ability and merit to be the deciding factor in appointing Maintenance of Way employes to fill these positions, regardless of seniority.

"Mr. Weaver made it very plain to General Chairman Goodwin that only men of mechanical ability and capable of making ordinary running repairs to these roadway machines would be selected for these positions, the Operators to be mechanically inclined and the Operators and Assistants must also be capable of protecting the equipment while on the line of road.

"The salary of the Operators was fixed at \$162.50 per month, the same as Rail Welders and Bridge & Building Foremen, while the salary of the Asst. Operator was fixed at \$90.00 per month, the same as Asst. Rail Welders.

"C. H. PITTMAN.

"SAVANNAH, GA., *May 25th, 1931.* chp."

At the hearing, in further support of their position, the employes argued as follows:

"The displacement of Weed Burner Operators through the assignment of Locomotive Engineers to these machines is clearly in violation of the agreement that exists between the Central of Georgia Railway Company and the Brotherhood of Maintenance of Way Employes. The agreement to which we now refer was made a part of the Position of Employes as filed with the Board in the joint submission of this case. This agreement was reached in conference with the management on May 25, 1931, and has been in effect for more than five years, whereas the contention that Locomotive Engineers should be assigned to these weed burners is one of recent origin. Our agreement with the Carrier provides that these weed burner operator positions were positions to which Maintenance of Way employes would be assigned and that the assignment of such employes to the positions would be made through the bulletin method.

"By assignment through the bulletin method we mean that the positions are advertised in the same manner that positions for Section Foremen, Bridge and Building Carpenters, and other Maintenance of Way jobs are advertised, that employes desiring to bid on such weed burner positions may so advise the proper officer and following this the applicants are given consideration in accordance with the provisions of the agreement.

"When the weed burner machines were put in service on the Central of Georgia Maintenance of Way employes were assigned to them and this practice of assigning Maintenance of Way men to such machines continued for a period of five years under arrangements that were mutually satisfactory to the Management and the Maintenance of Way employes and without protest from any other class of employes. It is only within the last year that the Locomotive Engineers have made claim for this work. The rule in the Locomotive Engineers' agreement reading,

"When electric or gasoline power is substituted for steam, such power will be manned by Engineers in order of their seniority, and they will be paid under the rule governing the class of service employes,'

was in effect during this entire five-year period. It becomes apparent, therefore, that the rule in the Engineers' agreement and under which they now claim the right to place Engineers on weed burning machines was in effect and was a part of the Engineers' agreement during the entire period that the weed burning machines were in service on the Central of Georgia.

"To summarize these facts, we might point out that the rule in the Engineers' agreement above quoted was in their agreement that became effective September 1, 1927, that weed burners were used on the Central of Georgia in what might be termed an experimental stage beginning with 1930, that three additional machines of the Fairmont Weed Burner type were purchased and put in service during 1931, that these machines have been regularly used since that time, that an agreement was entered into between the Central of Georgia Railway and the General Chairman of our Brotherhood in May 1931 covering the assignment of men to such machines, that the assignment of Maintenance of Way men and the performance of the work by Maintenance of Way men was continued thereafter without protest and that finally, in the year 1935, the Locomotive Engineers advanced their claim for this work.

"It is our contention that Locomotive Engineers should have the right to handle locomotives used in the movement of weed burners, or any other equipment that may necessitate a locomotive for such movement, but that they do not have the right to encroach upon the work performed by Maintenance of Way employees and covered by the Maintenance of Way agreement with machines or equipment of a self-propelled nature. There is no more justification for this displacement of Maintenance of Way employees used to operate weed burners than there would be for the displacement of Maintenance of Way employees used to operate section motor cars, Bridge and Building motor cars, pile drivers, ditching machines, or any other machine or device used in the performance of Maintenance of Way work and it can readily be seen that any such wholesale displacement of Maintenance of Way employees would create new and unheard of conditions in this Department and would be a widespread violation of the agreement that we hold with the Carrier, in addition to being a departure from all past practice and custom.

"Any contention that Locomotive Engineers should be assigned to weed burners because the present weed burner machine represents a substitution for steam, is unsound for the very simple reason that this machine is a substitution for hand labor, not a substitution for a locomotive. No locomotive ever cut weeds. Prior to this more efficient and economical device weeds were cut by section men with hand tools. In 1918 a weed destroying device known as the Dean-Williams Weed Destroyer was put into operation on the Central of Georgia. In this first substitution for hand labor the Dean-Williams device itself destroyed the weeds. The locomotive did not destroy them. The locomotive was merely used to move the weed destroyer, because it, in itself, was not a self-propelled device. Then later, as we have pointed out, a further improvement was developed in the Fairmont machine which performed the work more efficiently and which is self-propelling. Throughout all of this development the Maintenance of Way employees did the actual work incident to the destroying of weeds. They did it at first with hand tools and then with the Dean-Williams machine and later with the Fairmont machine. The service of a locomotive and a Locomotive Engineer was only required when the Maintenance of Way devices, with which the Maintenance of Way work was carried on, necessitated a locomotive. When the Dean Williams machine was put into operation only a portion of the weed destroying work was accomplished through the use of this machine because only one such machine was in service on the Central of Georgia and it could not cover the entire mileage of the Railway. Even after its introduction a majority of the work of this nature continued by the hand method. At no time has the preponderance of the work been performed with the aid of a locomotive.

"Aside from the fact that only a small part of the work was performed by the Dean-Williams machine, which required a locomotive for its movement, it should be kept in mind that Locomotive Engineers were not assigned to the weed burning work for more than six years after the Dean-Williams machine was discontinued.

"If it is sound philosophy to contend that, because a substitution for old power has been made, a particular class of employees, who may have

manned the old power, is entitled to man the new power because of said substitution, by the same power of reasoning the track man has a just grievance because, as stated in the joint statement of facts:

"* * * until August 1918 the weeds and grass were removed with shovels and other hand implements by regular section and track gang."

"Up until that time since the beginning of the railroad industry no one had anything to do whatsoever with the destroying of weeds on the Central of Georgia, except track gangs. The power destroying machines that have since that time come into use have taken the place of, and eliminated, many track men in connection with the destroying of weeds and grass, just as the many other labor-saving devices have taken the place of manual power, and it is customary not only in the Maintenance of Way Department, but in other departments of the railroad, that when labor-saving devices are brought into use that the operators of such labor-saving devices be chosen from the class of employees who formerly, by the hand method, performed the work which the labor-saving device is taking the place of, and it was no doubt in furtherance of this established custom, that the Central of Georgia Management and the Committee representing the Brotherhood of Locomotive Engineers wrote in their agreement, effective September 1, 1927, the rule which states:

"Where electric or gasoline power is substituted for steam, such power will be manned by engineers in order of their seniority, and they will be paid under the rule governing the class of service employed."

and it was understood at the time that this rule was promulgated that it was intended to apply to power used in connection with the moving of trains and not to the miscellaneous self-propelled machines in the Maintenance of Way Department which have gone into use supplanting the old hand-operated machines or hand power in the performance of Maintenance of Way Work.

"If the Locomotive Engineers are entitled under their rule to man the weed burner machines, then, by the same right, they would be entitled to man all other self-propelled gasoline or steam-driven maintenance machines, such as motor cars, so commonly in use by Track and Bridge gangs, used in transporting the employees and tools to and from their headquarters to point of work, used in hauling material used in their work; Burro Cranes, so commonly used in handling the heavier material, used by both track and bridge gangs; Locomotive Cranes, used for the same purpose that the burro cranes are used; rail loading machines, used in loading and unloading track rails, taking the place of the old hand method, rail laying machines, used by track gangs in setting in and out of track the new and old rails in rail replacements; tie tamping machines, used in place of the old hand tamping pick method, in tamping ballast under the cross ties; adzing machines, used in adzing the cross ties, in place of the old hand method of using a foot adz, to adz the cross ties, in order that a smooth even bearing might be had on each cross tie; bolt tightening machines, used to tighten track bolts, substituting for the old hand method of track wrenches; pile driver machines, used in driving piling; air compressors, used to furnish air in connection with operation of hand labor-saving devices, such as saws, paint sprays, boring machines, etc.; track lining machines, used in lining track taking the place of old hand method of track men lining track with steel bars; ditching machines, it is impossible to estimate the number of track men eliminated by the use of steam or gasoline ditching machines.

"All of these above mentioned machines are labor-saving devices, that have been substituted for regular track and bridge men hand methods, and it is universally understood that the operation of these machines is Maintenance of Way employees' work and the operators, assistants, etc., with the exception of very rare instances, are selected from the Maintenance of Way employees, covered by our agreement through the bulletining method.

"Most of the railroads in the United States use motor cars to transport the employees to and from their work. These motor cars are also used in hauling materials used in connection with maintenance work, pick up scrap, etc. These units usually consist of a motor car and coupled trailer. The Locomotive Engineers so far have not claimed the right to man these

motor cars, but the principle of the operation is the same as the weed burner machine and from my viewpoint is just as much a train as a weed burner outfit. It is, however, true that the weed burner outfits are used constantly on the track when burning weeds, whereas the motor car units as a rule are used only a short time each day, though quite often it is necessary in handling material, ditching, etc., that they be used throughout the entire work day.

"On the Central of Georgia, since the Locomotive Engineers displaced the weed burner operators, they have been performing all the duties formerly assigned to the weed burner operators, i. e., a general supervision of the employees used in connection with the weed burner operation; using a regular Maintenance of Way Department timebook in keeping and reporting the time of all the employees, except themselves. Their time is kept on a regular Locomotive Engineer's time slip; making out material reports, distribution of time of employees, reporting the work done by the machine and, in general, not only have they displaced the operator in the actual operation of the machine, but they are making supervisory employees of themselves which, of course, is necessary in connection with the operation of all these Maintenance of Way machines, which is purely and simply Maintenance of Way employees' work and always so recognized.

"As set out in the Statement of Facts in the Joint Submission, the Central of Georgia Railway, after experimenting during the year 1930 with the Fairmont Weed Burners, decided their use was practical and purchased additional machines in 1931. Prior to this time the old Dean-Williams Weed Destroyer, as well as the Fairmont Weed Burner, used for test purposes in 1930, were manned by regular Maintenance of Way employees. Due to the fact that additional machines were being purchased and following out the long accepted custom the then Chief Engineer of the Central of Georgia, Mr. C. E. Weaver (now General Manager), notified the General Chairman of the Maintenance of Way Employees, that these additional machines were being purchased and would be used for destroying weeds and grass and invited the General Chairman to the conference on May 25, 1931, for the purpose of agreeing upon the method of filling the positions of operators and assistants for the machines, as well as the rates of pay to be applied.

"A memorandum of this conference was prepared, copies being given to the General Chairman, which is the custom followed on the Central of Georgia in respect to conferences of this nature held between the revisions of the agreement, then when a revision is made these memoranda are written into the agreement. At this conference on May 25, 1931, it was agreed that,

"Maintenance of Way employees for operating the various Roadway machines such as weed burners, weed mowers, discers, etc., * * * would be filled by the bulletin method, ability and merit to be the deciding factor in appointing Maintenance of Way employees to fill these positions, * * * and it was further agreed that a salary of \$162.50 per month would be fixed as a salary for the operators of these machines with a salary of \$90.00 per month for the assistant operators.

"This agreement plainly and definitely establishes the right of Maintenance of Way employees, parties to this dispute, to man these machines. The operators who were on these machines when they were in use from 1931 up to July 27, 1936, were on that date displaced by Locomotive Engineers upon order of the Central of Georgia Railway, which they state, was in compliance with Decision 525 of the First Division of the National Railroad Adjustment Board, and because of this displacement and until such time as they are restored to their positions by order of this Division of the National Railroad Adjustment Board, they are entitled to the rates of pay they would have received had they not been displaced by the Locomotive Engineers and we respectfully request that you sustain the position of the employees and order that, First, weed burner machines used by the Central of Georgia Railway should be manned by operators taken from the Maintenance of Way Department in compliance with the agreement just mentioned and that the operators who were manning these machines prior to July 27, 1936, be restored to their positions and, second, paid for any wages lost, on account of being displaced by these locomotive engineers."

POSITION OF CARRIER.—The carrier merely submitted that it was manning the weed burners with locomotive engineers in compliance with Award No. 525, Docket 1239, of the First Division, National Railroad Adjustment Board, dated August 22, 1935.

The carrier was not represented at the hearing, referring to its position in the above Docket 1239 before the First Division of this Board, which was there stated as follows:

"It is our understanding that this claim is based on paragraph (f) of Article 1 of the engineers' agreement, which reads as follows:

"Where electric or gasoline power is substituted for steam, such power will be manned by engineers in the order of their seniority, and they will be paid under the rule governing the class of service in which employed."

"It is clear from the language of this rule it was intended to preserve to engineers the right to operate power other than steam power when and where such power takes the place of steam power in the kinds of service which by practice was conceded to belong to engineers. It was never intended, and nothing in its language implies any intention to turn over to engineers work belonging to other departments. It was intended to preserve for engineers their right to operate new kinds of power which might be used in place of steam power in conducting the kinds of transportation formerly moved by steam and the operation of which power had been recognized as belonging to the engineers. The management holds that self-propelled weed burners, disc machines, and mowing machines are a form of machinery used in the roadway department and are to be operated by roadway employes. It was not intended by the above rule, nor is it necessary that any of these machines be manned by engine or train service employes."

OPINION OF BOARD.—There can be no question that the use of locomotive engineers in place of maintenance-of-way employes in the operation of these weed-burning machines was a direct violation of the express terms of the agreement of May 25, 1931; and it is also clear that even apart from this agreement the work involved has been recognized by custom and practice to be work belonging to maintenance-of-way employes and as not infringing upon the work of any other class of employes. It does not appear that the carrier is in conflict with these views, the sole defense offered for the repudiation of the agreement of May 25, 1931, and of the established custom and practice by displacing maintenance-of-way employes with locomotive engineers being the requirement of Award No. 525 of the First Division of this Board. It is not within the jurisdiction of the Third Division to determine whether or not any rule of the carrier's agreement with the Brotherhood of Locomotive Engineers has been violated in the operation of these weed-burning machines, but since it is unreasonable to assume that it was intended that these machines, essentially utilized for the destruction of weeds rather than for the movement of equipment, be manned by both locomotive engineers and maintenance-of-way employes, the carrier should seek relief from the burdensome requirements of its agreements as thus interpreted through negotiation with all the parties involved.

FINDINGS.—The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon and upon the whole record and all the evidence, finds and holds:

That the carrier and the employes involved in this dispute are respectively carrier and employes 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 facts of record disclose a violation of the operative agreement and an unjustified departure from established custom and practice.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: H. A. JOHNSON
Secretary

Dated at Chicago, Illinois, this 19th day of February, 1937.