

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Arthur M. Millard, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY  
EMPLOYEES

MISSOURI PACIFIC RAILROAD COMPANY

**STATEMENT OF CLAIM:** "Claim of Marshall Bland for two and one-half cents ( $2\frac{1}{2}\text{¢}$ ) per hour account he being displaced by Thomas Westcott. Westcott's position being turned over to another department, Westcott displacing Marshall Bland, B&B Motor Car Operator, Marshall Bland placing himself as B&B carpenter at two and one-half cents ( $2\frac{1}{2}\text{¢}$ ) per hour less than he could have earned as motor car operator, which was in violation of the agreement made effective January 1, 1928, covering rules and working conditions, and agreement made effective May 1, 1926, covering rates of pay."

**STATEMENT OF FACTS:** The employees submitted the facts as follows:

"At the time the wage agreement dated May 1, 1926, went into effect, there was a motor car furnished B&B gang No. 1, St. Louis Terminal of the Missouri Pacific Railroad. The operator of this motor car being paid the rate of sixty-two and one-half cents ( $62\frac{1}{2}\text{¢}$ ) per hour as provided for in the above mentioned wage agreement. This motor car being used for the purpose of hauling B&B men to and from the location of their work and handling material used by this B&B gang. Several years ago the Railroad Company discontinued the use of this motor car and substituted in its place a truck which was used for the identical service the motor car had been used for, i. e., hauling B&B men to and from their places of work and handling material used by B&B men. Such services taking up a large majority of the time of this truck. The regular B&B motor car operator of this B&B gang was placed on this truck as driver, paid the motor car operator's rate, and carried on the B&B seniority roster.

"On December 1, 1936, this truck was placed under the jurisdiction of the Stores Department, and on December 17, 1936, a man from the Stores Department placed on this truck as operator at a rate of forty-seven and one-half cents ( $47\frac{1}{2}\text{¢}$ ) per hour, which displaced Thomas Westcott from the position of motor car operator in B&B Gang No. 1, and at the same time the Railroad Company discontinued the rate of sixty-two and one-half cents ( $62\frac{1}{2}\text{¢}$ ) per hour in B&B Gang No. 1. Thomas Westcott, in line with his seniority rights, after his position was abolished, displaced Marshall Bland as B&B Motor Car Operator in Gang No. 6, Marshall Bland being forced to place himself as B&B carpenter at sixty cents ( $60\text{¢}$ ) per hour, two and one-half cents ( $2\frac{1}{2}\text{¢}$ ) per hour less than he was earning as motor car operator."

There is in evidence an agreement between the parties bearing effective date of January 1, 1928.

**OPINION OF BOARD:** This claim is based on an agreement between the parties covering rules and working conditions, effective January 1, 1928, and a separate agreement covering rates of pay effective May 1, 1926.

The facts in evidence are that at the time the wage agreement between the parties was made effective a motor car was furnished Bridge and Building gang No. 1 at the St. Louis Terminal, for the purpose of handling or transporting men in that gang to and from their work and for handling the material and supplies which they used. The motor car was operated by an employe designated in the wage agreement as Motor Car Operator, and at a specified rate of 62½¢ cents per hour.

Later in the year in which the wage agreement was made (1926), the motor car used on the rails of the carrier was supplanted by an automobile, and when this was done the operator of the former rail motor car was assigned to the operation of the automobile without any change being made in the payroll classification, or in the employes rate of pay, as the majority if not all of the time of the employe was consumed in the transportation and handling of men, material, etc., of the Bridge and Building Department.

On December 1, 1936, the automobile, or, more properly, automobile truck, was placed under the jurisdiction of the Supply Department Agent, in an arrangement made for the pooling of the Company owned trucks in the St. Louis Terminal, and on December 17, 1936, the position of motor car operator on the Bridge and Building gang was abolished by the Carrier, and the truck formerly used in Bridge and Building work was pooled with other trucks of the Supply Department, and an employe from the Stores Department was assigned as operator of the truck at a rate of 47½¢ cents per hour.

In the change made, the operator of the truck, Westcott, was displaced from the position of motor car operator; the rate of 62½¢ cents per hour specified in the wage agreement was discontinued in Gang No. 1; and Westcott, in line with his seniority and following the abolishment of his position, displaced Marshall Bland as B&B motor car operator in Gang No. 6, and Bland was forced to place himself as a Bridge and Building carpenter at a rate of 60 cents per hour, or 2½ cents per hour less than he had formerly received as a motor car operator.

With respect to the contention of the Carrier that the classification of Motor Car Operators in the wage agreement of the Bridge and Building employes contemplated the operation of rail motor cars, and that the agreement with the Brotherhood of Railway Clerks embraces the classification of automobile chauffeurs, the fact remains that when the rail motor car used in Gang No. 1 was changed in 1926 to a motor car operated on streets and highways, there was no change in the class of work performed, nor was any change made either in the classification of the employe or in the rate of pay until in 1936, ten years later, when the position of motor car operator was abolished in the Bridge and Building Department and the work turned over to another department at a reduction in the rate of pay.

In this, as in other claims, the Board submits that no question has arisen as to the Carrier's right to abolish positions that have been negotiated into or are governed by agreements between the parties when there is no work to be performed, or to effect economies when such action is effected in an orderly manner. However, the Carrier is not justified in removing work which still continues to exist, from employes covered by one agreement, to employes covered by another, without making such change a matter of negotiation and agreement between the parties.

In this instant case the facts are evidenced that in abolishing the position of motor car operator in Bridge and Building Department Gang No. 1, which had been specifically negotiated into the agreement covering rates of pay, and under a classification recognized over a period of years as properly applicable to the work performed, and assigning the work which still con-

tinued to exist to an employe, or employes, of a department not covered by the agreement between the parties, the Carrier violated the terms and spirit of the existing agreements.

**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 employe involved in this dispute are respectively carrier and employe 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 Carrier violated the terms and spirit of the existing agreements between the parties covering rates of pay and rules and working conditions.

#### AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson,  
Secretary.

Dated at Chicago, Illinois, this 21st day of December, 1937.