

Award No. 816

Docket No. MW-842

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William H. Spencer, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
THE CHICAGO, ROCK ISLAND AND PACIFIC**

RAILWAY COMPANY

(Frank O. Lowden, James E. Gorman, Joseph B. Fleming, Trustees)

STATEMENT OF CLAIM: "Claim of George E. Blake, section man, Liberal, Kansas, Pan Handle Division, that he be paid the difference between the rate received as section man, 31c per hour, and the rate applicable to rail loader machine operator, \$128.70 per month, for the time he operated rail loader machine from July 21 to 31, inclusive, 1937, and the difference between the rate received as section man, 36c per hour, and the rate applicable to rail loader machine operator, \$138.90 per month, for the time he operated rail loader machine from August 1 to September 15, inclusive, 1937."

EMPLOYEES' STATEMENT OF FACTS: "George Blake was engaged as operator of an air-powered rail loader machine on the Panhandle Division from July 21st to September 15th, 1937, inclusive."

POSITION OF EMPLOYEES: "As indicated in the Statement of Claim, and as stated in the Statement of Facts, George Blake was engaged during the period indicated in the operation of an air-powered hoisting machine that was used to lift rails from the ground on to a railroad car. For this service he received the rate applicable to a section laborer.

"It is alleged by the Carrier that the operation of a hoisting machine of this type does not require the skill of a machine operator. To this we cannot agree. The facts are that Blake was operating a power machine lifting heavy objects. He was responsible for the proper performance of the machine. Like in the operation of any power hoist, a slip, or improper movement on the part of the operator might have resulted in injuries to workmen as well as causing damage.

"All railroads, including the Rock Island, recognize that operators of even the simplest type of machine rank above section laborers and have agreed to rates of pay applicable to the particular type of machine, which rates are considerably higher than those applicable to section laborers. To illustrate this we quote Group 13 of Rule 1 in agreement in effect on the Rock Island:

'Group 13. Roadway Machine Operators will embrace employees used in operation of roadway machines, such employees being designated as:

Rail-Laying Machine Operators
Weed Burner Operators and Helpers
Track Bolt Tightener Operators
Adzing Machine Operators
Track Lifting Machine Operators

"The employes ask for the difference between track laborer's hourly rate and rate of \$128.70 per month, prior to August 1, 1937, and \$138.90 after August 1, 1937. The \$128.70 and/or \$138.90 rate was the negotiated or agreed upon rate of the operator of a rail-laying machine, which machine is self-propelled, and the inclusion in the agreement of these roadway machine operators and the position and rate applicable to this self-propelled rail-laying machine was reached after negotiation based on the fact that the operator, in addition to his duties in handling the derrick or boom on this machine, also must operate the self-propelled machine, and skill is also required of him in placing the rail in proper position for laying. The employes operating the air hoist merely operate the cable in loading and unloading rail and open or close an air valve to raise or lower the rail at the end of a cable. He has nothing whatever to do with the movement of the flat car on which the air hoist is placed or placing of the rail in position for laying. The employes operating the air hoists were under the supervision of a section foreman, track supervisor or roadmaster, one or more of whom were present with the work train and supervising its operation. The flat car on which the air hoists are located and the flat cars for the rail are moved on signals of a member of the work train crew. The self-propelled rail laying machine operator is in full charge of the machine he is operating. The rate negotiated for the operator of the self-propelled rail laying machine does not apply to Mr. Blake, and the Board has before it nothing on which to base an award.

"At the hearing on this dispute we will desire to submit photographs and/or drawings of the air hoists set up on a flat car, and of the rail-laying machine above referred to."

OPINION OF BOARD: At the outset it is noted that the carrier makes no contention that the work involved in this dispute is not covered by its Agreement with the Petitioner. The only question presented for consideration is whether the claimant was properly paid as a "laborer" or whether he should have been paid as a "roadway machine operator."

The Division expresses no opinion on the question whether a "rail loader" is a machine within the meaning of Rule 1 of the Agreement between the parties. It will suffice for the disposition of this claim to find that in its opinion this piece of railroad apparatus, even though it be regarded as a roadway machine, is not covered by the current agreement.

The first paragraph of Rule 1, the Scope Rule, states:

These rules will govern the hours of service and working conditions of all employes not including supervisory forces above the rank of foreman, performing work of a maintenance and construction character in Maintenance of Way Department (not including Signal, Telegraph and Telephone Maintenance Department, nor employes performing work of a clerical character) and employes listed below.

The paragraph then lists various classes of employes, including "Roadway Machine Operators and Helpers."

Standing alone, the paragraph just quoted would require the inference that the claimant herein in the performance of the work in dispute was a roadway machine operator, if, of course, it should be decided that the apparatus manipulated by him is a roadway machine. The Division, however, is of the opinion that this general statement is modified by the more specific statement found in Group 13 of the same rule. This provides that "Roadway Machine Operators will embrace employes used in operation of roadway machines, such employes being designated as 'rail-laying machine operators'" and nine other specifically described operators. Group 13 does not, however, include "rail loader operators." In the opinion of the Division this grouping purports to be an exclusive listing of machine operators to be included in the group, and not merely a sampling for the purpose of illustration.

The statement describing Group 13 concludes with the provision that the grouping will embrace "operators of such other similar machines as may be

placed in service in the Maintenance of Way Track Department in the future." This clause cannot, however, be construed to include the apparatus here in dispute, because the record indicates that it was in service on the property of the carrier at the time the rule in question was negotiated.

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 claimant was properly paid for the service in dispute.

AWARD

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 8th day of March, 1939.