

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

**THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY
COMPANY**

**THE CHICAGO, ROCK ISLAND AND GULF RAILWAY
COMPANY**

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

STATEMENT OF CLAIM: "Claim of James L. Anderson, machine operator, Southern Division, that he be paid at machine operator's rate of pay for October 9th, 10th and 12th, 1936, days on which a section laborer was assigned to operate the rail loading machine, while Anderson was obliged to lose time."

EMPLOYES' STATEMENT OF FACTS: "On October 5, 1936, roadway machine operator James L. Anderson, Southern Division, was instructed to relieve roadway machine operator Baldwin in operation of an air rail loading machine. He operated this machine until October 8th when the operation thereof was assigned to an extra gang laborer, machine operator Anderson being required to lose time October 9th, 10 and 12th."

POSITION OF EMPLOYES: "Rule 1 of Agreement in effect between the Carrier and the Brotherhood, groups the various classes of employes in the Maintenance of Way Department, and defines the service of the employes in the respective groups. Group 13 of that rule reads:

'Group 13. Roadway machine operators will embrace employes used in operation of roadway machines, such employes being designated as:

Rail-Laying Machine Operators
Weed Burner Operators and Helpers
Track Bolt Tightener Operators
Adzing Machine Operators
Track Lifting Machine Operators
Portable Power Rail Saw Operators
Track Mower Operators
Disc Machine Operators
Track Spike Machine Operators
Tie Tamper Machine Operators

and operators of such other similar machines as may be placed in service in the Maintenance of Way Track Department in the future.'

"Group 8, of that rule reads:

'Extra Gang Laborers and Fence Gang Laborers.'

"That employes listed in Group 8 should not be called upon to operate machinery is very evident. The operation of roadway machinery is to be performed by employes coming within Group 13. That the Carrier recognized that is evidenced by the fact that it had assigned roadway machine operator Baldwin to operate the air rail loading machine in question. Later, Operator Baldwin was assigned to some other machine, and roadway machine operator Anderson was instructed to relieve Baldwin, which was proper. We maintain, however, that the Carrier was in error and violated the agreement, when on October 9, 1936 it assigned the operation of the machine in question to an extra gang laborer at extra gang laborer's rate of pay. We therefore maintain that the claim of roadway machine operator Anderson, who lost time on October 9th, 10th and 12th, because of the erroneous assignment of the extra gang laborers to the operation of the machine, that he be paid for those days at machine operator's rate of pay, is just and proper, and we respectfully request that the claim be allowed."

CARRIER'S STATEMENT OF FACTS: "In the summer of 1936 rail was relaid in main track on the Southern Division from Union City to Chickasha, Oklahoma, and in September and October, 1936, the displaced rail was gathered and loaded, by use of air hoist rail loaders constructed one on each end of a flat car. James L. Anderson, a section laborer holding seniority as a work equipment operator, was used to operate air hoist on one of these air hoist rail loaders from October 6 to 9, 1936, when section men were allowed to take over the work as it has been the practice to use section laborers on rail loaders and as we do not consider these rail loaders as roadway machines."

POSITION OF CARRIER: "For a number of years it has been the practice to use an outfitted flat car for loading and unloading rail. The use of this flat car outfit makes it easier for the track laborers to load and unload rail, and track laborers, at laborer's rate of pay, have been used for this work. There is no particular skill required to operate the hoist, one of which is located on each end of the car. Power is supplied by using air in cylinders which is furnished from the locomotive through the train air line. This flat car, on which these air hoists are placed, is not self-propelled, but is hauled in a work train by a locomotive. This is merely a tool set up on a flat car to make the work of loading or unloading rail less strenuous and hazardous to the employes. It is not similar to any roadway machine mentioned in Rule 1, Group 13 of the Maintenance of Way agreement. Therefore, there was no need, necessity or obligation under the Rules to operate this rail loader with a machine operator at machine operator's rate of pay."

"Even if (which we deny) this device is held to be a roadway machine and is required to be operated by a roadway machine operator under the provisions of Rule 1, Group 13, there is still no agreement covering a rate of pay, and the Board would have nothing on which to base an award. We wish to call particular attention of the Board to the fact that the contract of January 1, 1936, is an agreement covering hours of service and working conditions. This contract of January 1, 1936 carries in it no provision for the fixing of rates of pay and sets no standard which is to be used during the negotiations in reaching a reasonable rate for new positions. The operator of this device might, therefore, be called a roadway machine operator and still he would not be entitled to any more money per hour than the laborer's rate of pay. There is no agreement in existence by the terms of which Mr. Anderson, a machine operator, should have continued on the position on this rail loader, which is not a roadway machine similar to those mentioned in Rule 1, Group 13. It has been the practice to use section laborers in the gang to operate this air hoist rail loader, and on the dates in question, October 9, 10 and 12, 1936, Raymond Heaston and L. Doke, section laborers, were used on the air hoist rail loader at section laborer's rate of pay."

"We contend that this air hoist rail loader is not a roadway machine such as is listed in Rule 1, Group 13 of the agreement, and, therefore, machine

operator James L. Anderson was not entitled to remain as operator of the air hoist and that past practice permitted the use of section laborers in the gang in operating the air hoists on October 9, 10 and 12, 1936. The section laborers operating the air hoists merely operate the cable in loading and unloading rail by opening or closing an air valve to raise or lower the rail at the end of the cable. They have nothing whatever to do with the movement of the flat car on which the air hoists are placed. The employees operating the air hoists were under the supervision of a section foreman, track supervisor or roadmaster. 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. If this were a self-propelled roadway machine, then, of course, a machine operator would properly be used to man same, but this air hoist rail loader is not a self-propelled machine, nor is it one coming under the classification mentioned in Rule 1, Group 13. Therefore, we were perfectly within our right in assigning section laborers to operate it. We permitted Mr. Anderson to operate it for a few days, but as it was not a roadway machine and he was not considered as a member of the gang working in the rail relay program, no rule has been violated by removing him and putting on section laborers."

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 machine in question is not included in Roadway Machine group, therefore, Anderson had no rights thereto as machine operator.

AWARD

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 27th day of April, 1939.