

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Ernest M. Tipton, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES
ATCHISON, TOPEKA AND SANTA FE RAILWAY SYSTEM**

STATEMENT OF CLAIM: "Claim of the System Committee, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees that the hourly rate of pay for operation of the scrap shear at Cleburne, Texas, General Store shall be 76 cents per hour retroactive to August 3, 1937."

EMPLOYES' STATEMENT OF FACTS: "On August 3, 1937, the Carrier installed a Doelger & Kersten power operated scrap shear or cutting machine in its General Store, Cleburne, Texas, to be used in the reclamation of usable scrap and the preparation of saleable scrap for sale.

"The Carrier arbitrarily established the rate of 50 cents per hour to apply to services of employees when assigned to operate said machine, which rate of pay the Organization contends is improper and not justified, under the rules of our agreement. The Organization claims a rate of 76 cents per hour should have been and shall now be established for such work.

"The Cleburne Store comprises a separate seniority district within and of itself. There are no other machines of this character maintained or operated in this seniority district. There are, however, machines of similar character and requiring relatively the same class of duties and responsibilities maintained, operated and rated in the San Bernardino, California General Store as follows:

Tie Plate Punch Machine	—76¢	per hour
Spike Straightener	"	—63¢ " "
Rail Bender	"	—76¢ " "
Rail Saw	"	—76¢ " "

"There is no position in the Cleburne Store, nor any other similar store, rated at 50¢ per hour embracing similar or comparable duties and responsibilities. The skill and training required to operate the scrap shear machine at Cleburne is comparable to that required in the operation of the four machines at San Bernardino mentioned above. The responsibilities attaching to the operation of all these power driven machines are comparable. In fact, there is no relevant factor or factors which justify such a wide disparity in the rates of pay for such work at these two General Stores."

CARRIER'S STATEMENT OF FACTS: "On August 3, 1937, a power operated shear was installed in the Store Department at Cleburne, Texas for use in the preparation of scrap for sale. When such shear is in operation, the operator thereof is paid for the time engaged at 50¢ per hour.

be fallacies in comparison. While the General Chairman was reaching out to San Bernardino for comparisons, one of the available comparisons, and not an illogical one at that, was present at that point in the shape of a shear used by the Store Department in cutting scrap for sale, same being located in the Mechanical Department back shop, the operator of which is paid at the rate of 45¢ per hour (see 'Carrier's Statement of Facts'); yet the employees chose to ignore the presence of this machine and its use for the same purpose as those at Cleburne and Topeka. One of the fallacies in comparison, namely, the spike straightening hammer, rate 63¢ per hour, also has seemingly been ignored; in fact, it appears to have been abandoned; perhaps the reason is that the rate would not harmonize with the claim for 76¢ per hour. These, that is the ignoring of the presence at San Bernardino of a scrap shear and the abandonment of the spike straightening hammer comparison, are unexplained inconsistencies on the part of the employees, even though their avoidance presents no insolvable problem.

"There is utter absence of schedule rule, reason, equity and logic to sustain the position of the employees."

OPINION OF BOARD: On August 3, 1937 the position of scrap shear in the General Store at Cleburne, Texas was created and the rate of pay was established by the carrier at 50 cents per hour. Both parties to this dispute agree that when this new position was created there was no similar position in this seniority district.

Section 5, Article 12, of the current agreement states that the wages for new positions shall be in conformity with wages for positions of similar kind or class in the seniority district where created. From the record we gather that the carrier has only two similar machines; one which is located at Topeka, Kansas, where the rate of pay is 50 cents per hour; the other machines are located at San Bernardino, California, where the maximum rate of pay is 76 cents per hour for similar machines.

Since neither Topeka, Kansas or San Bernardino, California, are in the same seniority District with Cleburne, Texas, Section 5, Article 12 does not apply. It is the function of the carrier, in the first instance, to establish the rate of pay for a new position; upon protest of the employees the process of negotiation must be pursued. Under these circumstances, the Board is of the opinion that the dispute should be remanded to the parties for negotiation.

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 employee involved in this dispute are respectively carrier and employee 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 dispute is remanded to the parties for negotiation.

AWARD

Claim remanded for negotiation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 11th day of December, 1940.