

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

THE READING COMPANY

STATEMENT OF CLAIM: 1. Claim of the System Committee of the Brotherhood that the Carrier violated the rules of the existing agreement when Milton J. Mulligan, classified and rated as Truckman, 2nd Street and Lehigh Avenue, Philadelphia, Pa., was required and instructed to operate electric crane in addition to his assigned duties of Truckman at the rate of 56¢ per hour.

2. That Milton J. Mulligan be compensated for the difference between 56¢ per hour and the established and agreed upon rate of Crane Operator, 73¢ per hour for a total of 184 hours and 55 minutes.

EMPLOYES' STATEMENT OF FACTS: During the period from November 25, 1940 to March 22, 1941, Milton J. Mulligan, classified and rated as Trucker, 56¢ per hour was required to operate electric crane, 2nd Street and Lehigh Avenue, Philadelphia, Pa., the total time of 184 hours and 55 minutes.

Subsequent to March 22nd, the Carrier established an agreed upon composite rate to include all the higher rated duties including the operation of crane and thereby reclassified the former position of Truckman. Carrier declines to compensate Mr. Mulligan for the higher rated duties of crane operator prior to March 22, 1941.

The nearest crane operator under the scope of the Clerical Agreement is at Wayne Junction Transfer, Philadelphia, Pa., and rated at 73¢ per hour.

The committee requests that Mr. Mulligan be paid the difference between 56¢ per hour, the agreed upon rate for Truckman, and 73¢ per hour, the agreed upon rate of crane operator.

POSITION OF EMPLOYES: Rule No. 17 reads: "Positions (not employees) shall be rated and the transfer of rates from one position to another shall not be permitted."

Carrier by its action attempts to rate the employee. The employee was assigned to a position of Truckman and requested not to be used as a Crane Operator unless paid a higher rate. The Carrier required the employee to operate the crane, and thereby rated the employee through their action.

Rule No. 18 reads: "The rates for new positions shall be in conformity with the rates for positions of similar kind, or class in a seniority district where created."

There is no position rated and assigned as Crane Operator in this immediate point seniority district; however, enlarged seniority districts have been

changes in rules, rates of pay or working conditions, where an agreement for same cannot be shown to have been reached between the parties. The Board will further note Exhibit No. 2, "Position of Division and General Chairmen" that they specify "the difference between rate of .56 per hour and that which would have received at the rate of .73 per hour." On this Carrier, "Point Seniority" is in effect for filling positions but when no applications from the point roster are received, the Division or Department Seniority as established becomes effective for filling vacancies. There was no rate of .73 per hour for crane work in effect in the 2nd Street and Lehigh Avenue seniority district, hence any application of Rule No. 19 cannot be made to the work performed by Mulligan in this district.

The Brotherhood appears to and admits that in making this claim, they looked around the territory covered by the "Division" roster (Philadelphia Division) and picked out the highest rate being paid anyone for doing crane work, namely **Wayne Junction Transfer, a full time cranesman's position**, at a station where approximately one hundred and twenty-five (125) men are employed, and used that rate on which to base the claim.

Carrier holds there is no justification for such basis and directs the Board's attention to Exhibit No. 1. The first nine (9) stations are all Philadelphia Division Stations and, with the exception of Wayne Junction Transfer, 22nd Street Station shows the largest number of man hours on crane work and the rate at that station is .56 per hour, the same as Mulligan received. Similar rate was paid at Germantown and Trenton.

During the negotiation for reclassification of Mulligan's position, between October 1940 and March 1941, a check was made of the work performed by him on the working days of the month of February 1941. Carrier attaches hereto and makes part hereof Exhibit No. 3, showing result of this check. The Board will note that Mulligan performed only (38) hours and (5) minutes crane work in the month, an average of only one hour and thirty-nine minutes per working day, but on the basis of this and the other services performed, besides trucking, carrier agreed with the committee that as work other than trucking averaged over four (4) hours per day it would reclassify the position to one of "Clerk" at the rate of \$135.00 per month, to cover the composite service rendered, **but without any agreement to make the reclassification and rate retroactive.** No such agreement is alleged, or can be shown to have been made by the Brotherhood of Clerks, hence there cannot be shown to exist any basis for retroactive application of Rule No. 19 to the reclassified rate of \$135.00, effective March 24th, 1941 (about .64½ per hour) and of course no basis upon which rule No. 19 can be retroactively applied to the rate of .73 per hour in effect at Wayne Junction Transfer, another seniority district entirely.

As the whole handling of this case constituted a "Rule, Rate of Pay and Working Conditions" negotiation over which the National Railroad Adjustment Board has no jurisdiction, under the Railway Labor Act as amended, the Board is without authority to sustain this claim unless it is supported by a violation of rules of the effective agreement by the Carrier—which showing has not and cannot be made in the instant case. The Board should so find and deny the Claim.

OPINION OF BOARD: The proper rate for the position here involved, concerning which the parties were in controversy, was fixed by agreement between them at a monthly rate of \$135.00, effective March 24, 1941, which thereafter applied. Based upon the particular facts and record relating to the period covered by this claim, and upon the understanding as to the proper rate for the position, the amount of \$31.44, evidenced by this claim and the record of the case yet to be in controversy, is considered to be due the claimant, Milton J. Mulligan.

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

Based upon the particular facts and record relating to the period covered by this claim, and upon the understanding as to the proper rate for the position, the amount of \$31.44, evidenced by this claim and the record in this case, is due the claimant.

AWARD

Claim disposed of in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 24th day of March, 1942.