

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Curtis G. Shake, Referee

PARTIES TO DISPUTE:

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

LEHIGH VALLEY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

M. J. Boyle and C. Morningstar, Storehouse Laborers, Sayre, Pa., are entitled to the difference in pay between the rate of Laborer, 55¢ per hour, and Tractor Operator Helper, 58¢ per hour, for service performed on December 30, 1942, and shall now be paid the difference between these rates.

EMPLOYES' STATEMENT OF FACTS: In connection with the Shop delivery system from Sayre Storehouse to Sayre Shop, each Tractor Operator had a helper to assist in loading and unloading of material. Several months prior to December 30th, 1942, the Tractor Operator Helper positions on this job were abolished. On December 30th, Messrs. Boyle and Morningstar were assigned to perform this work and as the rate of Tractor Operator Helper is established at 58¢, the employees are entitled to that rate.

Claim was duly filed by Messrs. Boyle and Morningstar contending they were entitled to Tractor Operator Helper's rate for the date in question, in accordance with the provisions of Rules 4 and 9 of current agreement. Claim was appealed in the regular manner up to the highest official designated by the Carrier for handling such claims. Case was concluded in letter from Vice President and General Manager Gerard, June 2, 1943, reading:

"Referring to conference here on May 18th and 19th, at which time the docket submitted by the General Chairmen's Association was discussed, and in connection with your Case No. C-43-23, claim of Messrs. Boyle and Morningstar, Sayre:

While years ago a helper was furnished with each Tractor Operator, this was not necessary and as the work performed in this case was laborer's work, there is no justification for paying the helpers rate and it is declined."

POSITION OF EMPLOYES: There is in evidence an agreement between the parties bearing effective date of March 1, 1939 from which the following rules are quoted:

Rule 4—Preservation of Rates: (a) "Employes temporarily assigned to higher rated positions, and assuming the duties and responsibilities of the positions, shall receive the higher rates while occupying such positions. This provision will not apply when absent employee is paid."

OPINION OF BOARD: Claimants, regularly assigned Storehouse Laborers, rated at 55¢ per hour, demand pay at Tractor Operator Helpers' rate of 58¢ per hour for services performed December 30, 1942. The claim is based upon Rule 4 (a) of the Agreement effective March 1, 1939, which provides that, "Employees temporarily assigned to higher rated positions, and assuming the duties and responsibilities of the positions, shall receive the higher rates while occupying the positions." The parties agree that the proper disposition of the case turns upon a question of fact, that is to say, whether on the date named the claimants temporarily assumed the duties and responsibilities of Tractor Operator Helpers. If so, the claim should be sustained; if not, it should be denied.

It appears without dispute that the claimants loaded 70 barrels of oil, stored along side the storehouse, onto a tractor; that a Tractor Operator transported this cargo to some nearby point, without assistance from the claimants; and that the claimants then transferred the load into cars, for shipment to various points on the carrier's road. Sometime prior to the time when this work was performed the position of Tractor Operator Helper at this storehouse had been discontinued.

We have carefully read the entire record in an effort to ascertain the respective duties of a Storehouse Laborer and a Tractor Operator Helper, without which it is impossible for us to pass upon the merits of this controversy; and we are frank to say that the data before us does not suggest the answer. From all that appears, the duties of these positions are substantially the same. The only distinguishing characteristics disclosed by the record relate to their titles and rates of pay. We are obliged to hold that the claims have not been established.

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 employes involved in this dispute are respectively carrier and employes 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 there is no showing that the carrier violated the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 19th day of June, 1944.