

Award No. 4430

Docket No. MW-4459

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS

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

(1) That the Carrier violated the Agreement by paying Extra Gang Laborer's rate of pay to the operator of the derrick used in laying rail;

(2) That Laborer Roy Shrum be paid the difference between compensation received at Laborer's rate of pay and what he should have received at Rail Derrick Operator's rate of pay of \$1.06 per hour for services rendered while operating a derrick during the period March 3 to April 14, 1947.

EMPLOYEES' STATEMENT OF FACTS: During the period March 3 to April 14, 1947 Extra Gang Laborer Roy Shrum operated a hoisting machine used to lift new rails into place on a rail laying project between Caddo and Durant Oklahoma. This machine is not of standard guage but is narrower than standard. While in operation one wheel of this machine runs along one rail of the permanent track while the other wheel runs on a temporary rail placed between the permanent rails just inside and alongside the rail to be renewed. It is propelled up and down the track by men pushing it. But, the operator rides the machine. It has a boom extending forward and a lifting cable operates off this boom by means of a revolving drum powered by a gasoline motor. This machine was used to pick up the new rail previously placed along the right-of-way and set it in its proper place upon the ties.

Claimant Roy Shrum was paid at the Extra Gang Laborer's rate for his services while operating this hoist.

Claim was made for Rail Derrick Operator's rate of pay. The Carrier has declined to apply such rate.

The Agreement between the parties to this dispute date July 1, 1945, is by reference made a part of this Statement of Facts.

The claim is for the period March 3, 1947, when the rail laying was started and Mr. Shrum began work on the rail layer, to April 14, 1947, when Mr. Shrum was replaced on the rail layer with another laborer in the gang, and he was assigned to other duties as laborer in the gang. Prior to April 14, 1947, the rail derrick, No. X-101245, was not available and the American Ditcher was used to unload and load material on this job, but starting April 14, 1947, the rail derrick, with regular operator, Mr. T. A. Truster, was used for that work, instead of the ditcher. The rail layer, and the ditcher or rail derrick were used on the rail job at the same time, but the rail layer was used only to lay rail, and the ditcher or rail derrick was used only for unloading and loading rail and other track material. The rail layer and ditcher or rail derrick did not perform the same or similar character of work, and no claim for rail derrick operator's rate of pay has been made for laborer who relieved Mr. Shrum on the rail layer April 14, 1947. No legitimate basis exists therefore for claim of rail derrick operator's rate of pay for laborer on rail layer under the collective bargaining agreement between the parties on this property.

The Carrier respectfully requests that the Board deny the claim.

Except as expressly admitted herein, the Carrier denies each and every, all and singular, the allegations of Petitioner's claim, original submission and any and all subsequent pleadings.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant was used to operate a power driven rail layer and was paid Extra Gang Laborer's rate therefor. The Organization contends that he should be paid the rate of a Rail Derrick Operator.

The record shows that the Carrier has used the Madden rail layer for twenty-five years. Prior to 1944, these rail layers were manually operated by track laborers. The rail layer is a small piece of equipment, hauled on a push car to the place where it is to be used, placed on and off the track and pushed along the track by hand. It stands four or five feet high and has a short lifting arm extending about four feet from the track. It is used to lift rails from the shoulder of the roadbed into position for laying. In 1944, these rail layers were equipped with small one-cylinder gasoline engines to provide the power to move the rails which had formerly been manually done by having gang laborers turn two winch handles.

The rail derrick is a large heavy piece of equipment mounted on a flat car and equipped with a steam boiler and engine. It has a heavy swing boom 36 feet long, a 5 ton capacity, and is handled by freight or work trains. It is used for unloading and distributing rails, switches and other heavy material from flat cars and for loading similar materials onto such cars. It is not used for laying rails.

It is evident that the terms "rail layer" and "rail derrick" denote two distinct types of machine in the railroad industry. The addition of a small gasoline engine to a rail layer in the course of progress, makes it no less a rail layer. This is so even if it might afford a basis for the negotiation of a new rate for the position because of added duties, a matter not within the function of this Board. It seems clear to us that the functions of the two machines under consideration are entirely different and that the rail layer, with the gasoline engine attached, continues to perform the same function that it did before and, consequently, continues to be a rail layer as that term has been understood by the parties over the years. We fail to find any basis for holding that the Carrier misapplied the Agreement.

FINDINGS: The Third Division of the Adjustment Board upon the whole record and all the evidence, finds and holds:

That both parties to this dispute waived oral hearing thereon;

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

The Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon,
Acting Secretary

Dated at Chicago, Illinois, this 30th day of June, 1949