

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Francis J. Robertson, Referee

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES**  
**BOSTON AND MAINE RAILROAD COMPANY**

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

(1) The Carrier violated the Agreement when it failed and refused to compensate Messrs. H. T. Foley and Z. H. Eldridge at the Ditcher-Operator's rate of pay for services performed while filling the position of Operator of Ditcher W-1563 from September 1, 1950, to November 20, 1950, both dates inclusive;

(2) Claimants H. T. Foley and Z. H. Eldridge now be allowed the difference between what they were paid at the Crane Engineer's rate of pay and what they should have been paid at the Ditcher-Operator's rate of pay, account of the violation referred to in part (1) of this claim; specific time involved for each claimant as follows:

(a) H. T. Foley: 216 hours at straight time rate, 141¼ hours at time and one-half rate.

(b) Z. H. Eldridge: 64 hours at straight time rate, 9¼ hours at time and one-half rate, 13 travel time hours at straight time rate.

**EMPLOYEES' STATEMENT OF FACTS:** In 1945 the Carrier purchased and placed into service a unit of work equipment which was identified as Ditcher W-1563 from date of purchase until April 10, 1951. During the six year period from 1945 until 1951, this unit of work equipment was consistently identified and designated as a ditcher in bulletins issued by the Carrier advertising a position as operator of this unit of work equipment, with a ditcher engineer's rate of pay to be applied to the position.

Nonetheless, from September 11, 1950 to November 20, 1950, both dates inclusive, the claimant employees were assigned to operate Ditcher W-1563 but were compensated at the Crane Operator's rate of pay for such service.

Bid No. 46 (Bulletin) dated August 16, 1950, advertised for bids for the permanent position of "Work Equipment Operator on Crawler Ditcher-W-1563", the position to be paid the Ditcher Engineer's rate of pay. The position was awarded to Z. Eldridge, who subsequently vacated the position temporarily.

It is hereby affirmed that all data herein submitted in support of our position have heretofore been presented to the Carrier and are hereby made a part of the question in dispute.

**CARRIER'S STATEMENT OF FACTS:** Crane W-1563 is a combination piece of equipment capable of being used as a crane or a ditcher depending on the particular rigging being used. On the dates specified in the Committee's Statement of Claim, this piece of equipment was being used for picking up ties along the right of way. It was not rigged as a ditcher and was not used for any ditching work. The work was performed between Nashua, New Hampshire and Concord, New Hampshire. The claimants were paid for both straight time and overtime at the rate applicable to crane operators in New Hampshire. They are claiming the rate of pay for a ditcher operator in the Boston, Mass. Terminal Area.

**POSITION OF CARRIER:** Not having seen the Committee's ex parte submission, the Carrier cannot anticipate what arguments can be properly advanced in support of this claim. As stated above, the Claimants were operating a crane in New Hampshire and were paid the rate applicable to crane operators in New Hampshire. There is no reason why they should be paid the rate applicable to ditcher operators in Massachusetts.

The Carrier requests an opportunity to file an answer to the Committee's ex parte submission when it is received.

All facts and data herein contained have been submitted by the Carrier to the Claimants.

(Exhibits not reproduced).

**OPINION OF BOARD:** Claimant Z. H. Eldridge was awarded a position pursuant to Bid #46 dated August 16, 1950, advertising for "Work Equipment Operator, Crawler Ditcher W-1563" headquarters East Cambridge. The claimant, Foley, was also assigned to operate the same piece of equipment during the period of time involved in the claim but it is not clear from the record as to how he came to be so assigned during that time. By removing the arm and dipper stick on Crawler Ditcher #1563 the unit is adaptable to service as a crane and it was so used during the claim period. Claimants were paid at the crane operator's rate and now seek the ditcher operator's rate.

Under the bulletin (Bid) as phrased Claimant Eldridge bid upon a position the duties of which were to operate a given piece of equipment and the rate of the position was as advertised in the bulletin. The language of the bulletin points to the conclusion that the rate applies to the equipment to be operated and not to the use to which it is put. That the applicable rule has been so interpreted by the parties is evidenced by Carrier's letter of January 30, 1950, to the General Chairman which letter is quoted in the record.

The fact that the equipment was loaned to the New Hampshire District does not justify applying the lower rate for Ditching Machine Operator at New Hampshire to the claimant, Eldridge, for he held a position pursuant to Bulletin carrying the Massachusetts rate and under Rule 44 (Composite Service) his rate could not be reduced while transferred to and working in New Hampshire with the same piece of equipment. His claim will therefore be sustained. As said above, the record is not clear with respect to the status of Claimant Foley. In any event, he is entitled to be paid the ditcher operator's rate of his home seniority district and his claim is sustained on that basis.

We do not pass upon the effect of Bid No. 24 dated April 10, 1951, since the instant claim terminated November 20, 1950, and any issue with respect thereto is not before us.

**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 Employees involved in this dispute are respectively Carrier and Employees 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 Carrier violated the Agreement.

**AWARD**

Claim sustained as indicated in Opinion and Findings.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
By Order of Third Division

**ATTEST:** (Sgd.) A. Ivan Tummon  
Secretary

Dated at Chicago, Illinois, this 15th day of June, 1954.