

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Fred W. Messmore, Referee

PARTIES TO DISPUTE:

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

TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS

STATEMENT OF CLAIM: Claim of the Terminal Board of Adjustment of the Brotherhood that:

- (1) Carrier violated and continues to violate the requirements, provisions, and intent of the Clerks' Current Rules Agreement and of the Special Wage Agreement of October 11, 1951 when it unilaterally and arbitrarily failed to establish the proper rate of pay for the positions of Electric Tractor Operators in the New Mail Facility at St. Louis Union Station.
- (2) Carrier be required to reclassify the position of employees operating these tractors from Mail and Baggage Handler to Electric Tractor Operator at the agreed differential rate of 24 cents per day over and above that of the Mail and Baggage Handler retroactive to date such machine(s) was placed in operation.
- (3) All such positions shall be rebulletined at the corrected rate and posted to all employees holding seniority in District No. 30.

EMPLOYEES' STATEMENT OF FACTS: On October 11, 1951, after lengthy negotiations, an Agreement was reached setting up certain classifications in the Mail and Baggage Department, each of which carried a differential in rate of pay over and above that of Mail and Baggage Handlers. This Agreement was to be put into effect on a trial basis and was confirmed by the Carrier's letter of October 11, 1951. Employees' Exhibit 1.

At the time this Agreement was entered into, there were 50 tractor driver positions and on page 2 of the Exhibit, it will be noted that a differential of 24 cents per day was agreed upon.

After the trial period ended, several conferences were held with the Management, and on February 2, 1953, the Carrier in its letter of that date, agreed "to consider the rates established in the communication of October 11, 1951 . . . as the recognized rates for the jobs enumerated so long as they remain in existence." Employees' Exhibit 2.

In the spring of 1953, the Carrier completed a New Mail Handling Facility located just east of the Union Station which commenced partial operation on February 18 and full operation on April 1. Most of the mail handling force was transferred from Union Station Building to the new building.

mail from the sorting platforms to the tracks at the new facility. They are operated by simply moving the handle forward slightly and they stop when the handle is released. They are capable of slow speed only, up to two miles per hour pulling trucks and three miles per hour when not. The operator may either walk along with the tractor or ride upon it when moving. There is no particular skill necessary to operate them; simply the ability to guide them about at very low speed. The operators of these electrically powered tractors are paid the mail and baggage handler rate.

On April 29, 1953 the General Chairman made request that the operators of the electrically powered tractors be paid the same rate as the operators of the gasoline powered tractors. We quote the pertinent portion of that letter:

"We, therefore, request that the operators of the electric tractors be classified as tractor operators and be paid the three cent per hour differential."

When the request was declined they initiated a claim in behalf of the electric tractor operators for the difference between their rate of pay and that of the gasoline powered tractor operators, alleging a violation of Rule 50 of the contract of January 1, 1950 and the Agreement of October 11, 1951.

POSITION OF CARRIER: IN THE FIRST PLACE, this claim does not belong before this tribunal because it does not involve a grievance or an interpretation of an agreement. That was recognized by the organization when they attempted to negotiate the differential for the electrically powered tractor operators. See the quotation from their letter of April 29, 1953 in the Statement of Facts. The subsequent allegation about the alleged violation of Rule 50 of the contract and the agreement of October 11, 1951 is apparently an afterthought, designed to get what they were unable to get by negotiations. The claim should be removed from the docket.

IN THE SECOND PLACE, there should be no basis for the claim even though it were properly before this tribunal as an interpretation of an agreement, because it is evident from the Statement of Facts that there is no similarity in the operation of the two types of tractors nor in the conditions under which they are operated. The electrically powered tractors are used in the new facility exclusively, completely removed from passenger train operations and passengers going to and from trains on crowded platforms and no particular skill is required of the operators. If considered on its merits the claim should be denied.

All data submitted in support of Carrier's position has been presented to the duly authorized representative of the Employees and made a part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: The Carrier raises the issue that this case is not properly before this Board for the reason that it does not involve a grievance or an interpretation of an Agreement. In determining this issue, we deem it necessary to set forth in substance the following, to disclose what occurred on the property with reference to the handling of the claim.

On October 11, 1951, after lengthy negotiations, an agreement was reached between the parties setting up certain classifications of employees in the Mail and Baggage Department as follows:

Change the classification of 15 jobs from Assistant Foreman to Foreman.

Establish the classifications of dispatchers (9 jobs), scale house attendants (2 jobs), milk platform attendants (3 jobs), delivery gate attendants (2 jobs), and railway mail sorters (2 jobs) at a differential of 32 cents above mail and baggage handler rate.

Establish the classification of "loader" (83 jobs) and "tractor driver" (50 jobs) at a differential of 24 cents above the mail and baggage handler rate.

Change the classification of one job from Assistant Checking Foreman, rated at \$14.68 per day, to Checking Foreman, rated at \$14.91 per day.

This Agreement was put into effect by the Carrier on a trial basis for six months, the objective being to increase the efficiency of handling the work of the Mail and Baggage Department at the point involved, the six months trial period to start January 15, 1952, or as soon thereafter as the increased wages would be approved by the Railroad and Airline Wage Board functioning under the jurisdiction of the Economic Stabilization Administration.

After the trial period ended, several conferences were held between the parties. On February 2, 1953, by letter from John A. Wicks, Director of Personnel, Terminal Railroad Association, to Paul A. Dwyer, General Chairman of the Brotherhood of Railway Clerks, the Carrier agreed to consider the rates established in the communication of October 11, 1951, as the recognized rates for the jobs enumerated, as long as they remained in existence.

In the spring of 1953, the Carrier completed a new mail-handling facility located just east of the Union Station in St. Louis, Missouri, which commenced partial operation on February 18, 1953, and full operation on March 25, 1953. On April 1, 1953, the change-over was made. As a result thereof, all jobs in the department were abolished, and the employees picked new jobs and locations in line with their seniority. Among the new jobs so designated were those of "electric tractor operator." The Brotherhood asserts that it was its understanding that the electric tractor operators would be compensated at the rate of pay agreed upon for tractor driver operators.

This dispute involves ten (10) operators of electric tractors as shown in the October 11, 1951, Agreement. The Carrier compensated the electric tractor operators at the mail and baggage handler rate of pay, and not the rate of pay allowed tractor drivers, i.e., gasoline tractor drivers. This rate of pay which the Claimants received was 24 cents per day less than the rate paid gasoline tractor drivers. The employees here involved filed claims for the difference in the pay they received and the rate of pay paid to the gasoline tractor drivers. The Employees assert the Carrier agreed to pay tractor operators as heretofore indicated.

The claims were progressed in the usual manner, and on June 22, 1953, the General Chairman of the Brotherhood presented the same to the Director of Personnel of the Carrier as evidenced by the following:

Referring to a letter written by the Director of Personnel of the Carrier to the General Chairman of the Brotherhood under date of May 6, 1953, the General Chairman of the Brotherhood called attention to the letters of the Personnel Director of the Carrier dated October 11, 1951, and February 2, 1953. These letters related to the setting up of different rates of pay for certain positions in the Mail and Baggage Department as previously stated. In the letter of June 22, 1953, it is stated: "There is no distinction made in the type of tractors for which the 24 cents per day differential applies. Tractors, regardless of size or type, are used for the hauling of trucks and are, therefore, labor-saving devices for each truck that a tractor hauls, the Carrier saves the use of one employee, hence one of the primary motives for establishing a differential rate of pay."

Rule 50 of the Agreement of the parties is set forth, which will be discussed later in the Opinion.

When the new facility was opened and the position of electric tractor operator was established, the rate of mail and baggage handlers was applied to these jobs instead of the agreed rate of tractor operator.

Other subject matter appears in the letter which need not be stated.

The above letter to be considered as an appeal from the denial of the claims by the General Baggage Agent and the Carrier's Superintendent.

The Carrier's Director of Personnel, on June 24, 1953, replied to the General Chairman of the Brotherhood, stating, in referring to the letters of the Carrier dated October 11, 1951 and February 2, 1953, which we have previously referred to, on the dates mentioned therein, the Carrier had no tractors in the Mail and Baggage Department other than gasoline powered tractors. It therefore is manifest that the Carrier had no intention of applying the three cent differential to any other type of tractor; that the attempt to invoke Rule 50 of the Agreement between the parties was a belated one, as no mention was made of it in the General Chairman's letter of April 29, 1953. "You know that all tractor operators were paid the mail and baggage handlers' rate until the agreement to apply a three cent differential to the operators of the gasoline tractors was agreed upon." Other statements appear in this letter in answer to certain subject matter contained in the General Chairman's letter, which need not be mentioned. This letter goes on to state, as was stated in a letter of May 6, 1953, by the writer to the General Chairman, that there was no justification for this claim. This last statement is tantamount to a denial of the claim.

In this state of the record, we conclude this claim was properly handled and progressed on the property, and the carrier's contention to the contrary cannot be sustained.

It appears from the record that prior to February 18, 1953, all mail and baggage operations were performed at the Union Station. Upon completion of the Carrier's new mail-handling facility located adjacent to the Union Station, when full operation began on April 1, 1953, most of the mail-handling force was transferred from the Union Station building to the new building, both buildings being a part of the Mail and Baggage Department and the employees were in the same seniority district.

Among the positions established at the new location was ten "electric tractor operators" to operate a number of Yale Worksaver Heavy Duty Electric Tractors in the new building. In the Union Station proper, the Carrier used four-cylinder gasoline tractors known as Buda Model T G 24 Stop Mule, and also a Towmotor tractor. In the Union Station building the Carrier maintained twenty-eight tractor driver positions to operate the gasoline tractors which the Carrier continued to use there. Twelve tractor operator or driver positions were abolished, since, as shown previously, there had been fifty such positions at the Union Station location.

It is the Employees' position that the Carrier's action was in violation of Rule 50 of the applicable Agreement which reads: "New Positions. The rates of pay for new positions will be in conformity with the rates of pay of analogous positions (of similar kind and class) in the seniority district where created. In the event there are no analogous positions, the rate of pay of the new position will be established by negotiation between the parties signatory hereto."

Our duty is to survey the overall picture in all of its aspects for the purpose of determining whether the Carrier, by its action as we have heretofore set out, created new positions covering similar kind and class of work in the same seniority district, and whether or not the rates of pay for the new positions are in conformity with the rates of pay in analogous positions.

The Employees assert the position of "tractor driver" in the new mail facility, which entails the operation of an electrically driven tractor, is identical in every way with the position of driver of the gasoline driven tractor in the Union Station building; that the electric tractors are capable of pulling loaded mail trucks in groups of 2 to 8 between various locations in the new mail facility, and are used to pull trucks onto loading platforms where the mail is loaded into cars for outgoing trains. The gasoline tractors are used

for the same purpose in the mail shed of the Union Station. In fact, both types of tractors are used for the same purpose, and the only difference is in the size of the tractor. These tractors are labor saving devices, and without their use, the Carrier would be required to assign one or two men to each heavily loaded mail truck in order to move it to its destination.

Contra, the Carrier asserts that at the time the Agreement was reached in the instant case practically all the mail handling was conducted at the Union Station with the use of gasoline powered tractors capable of speeds up to fourteen miles per hour. The mail was handled on four-wheel high-bed trucks, and the driver of the tractors had to look out for moving trains, and avoid injuries to passengers going to and from trains over crowded platforms. The operators had to have the qualifications of chauffeurs, handling automobiles. When the new mail handling facility was placed in full operation, March 25, 1953, the mail was handled by electrically driven belts to and from the post office, and from the Union Station to the sorting platform in the new building. Low-bed trucks and electrically powered low-bed tractors are used for handling the mail from the sorting platforms to the trucks at the new facility. They are operated simply by moving the handle forward slightly, and they stop when the handle is released. They are capable of low speed only, up to two miles per hour pulling trucks, and three miles per hour when not pulling trucks. The operator may either walk along with the tractor or ride upon it when it is moving. There is no particular skill necessary to operate them, simply the ability to guide them about at low speed.

As we view the facts, it appears to us in considering "tractor operator" positions, the employees here concerned were required to operate and drive electric tractors, while other employees were required to operate and drive gasoline tractors, and such positions were in the same seniority district.

The type of motive power, whether it be electric or gasoline, used in tractors, the style of the trucks which they pull, or the speed at which the tractors are driven or the location where the tractors are driven have no bearing upon the operation of the tractor. Both tractors are self-propelled and require an operator, and are used for the same purpose, i.e., pulling four-wheel trucks from place to place about platforms in the handling of mail and baggage. We believe the positions are analogous.

Since the rate of pay of the tractor drivers' positions was established by agreement, as heretofore shown, the rate of these tractor operator positions should have been in conformity with the Agreement of October 11, 1951.

As stated in Award 1861: "The wages for new positions shall be in conformity with the wages for positions similar in kind or class in the seniority district where created." In that award, Rule 51 (a) provided that the wages for new positions shall be in conformity with the wages for positions of similar kind or class in the seniority district where created. The rule is similar in some respects to Rule 50 in the instant case.

It was said in Award 1861: "Under this rule it is necessary for a new position to receive the rate of an existing position to show that (a) it is in the same seniority district and (b) is of similar kind or class. It does not have to have equal responsibilities in the sense that duties and services are identical. It may still be of equal importance and responsibility." See also, Awards 2808, 5155, 3467, 3893, 4185, 4895, and 4964.

The Employees also make reference to Rule 59 of the Agreement between the parties. The part of the rule that bears some pertinency here is as follows: "* * * but established positions will not be discontinued and new ones created under the same or different titles covering relatively the same class or grade of work, which have the effect of reducing the rate of pay or evading the application of these rules."

In Award 1773, referring to Rule 60 very similar to that part quoted of Rule 59 above, it is said: "It is not necessary to constitute a violation of

Rule 60, that the duties of a newly created position be identical with those of a discontinued position, all that is required is that the newly created position covers relatively the same class of work." That is the situation in the instant case.

The Agreement of October 11, 1951, established the classification of "tractor driver" at a differential of 24 cents above the rate of mail and baggage handler. Nothing appears therein specifying any particular type of tractor. Nor was it stipulated in the Agreement with reference to the motive power of the tractor. It is evident that the motive power was not the basis for either the classification or the rate. The distinguishing difference, and the only basis which could have warranted the Agreement establishing the differential, would be the operation of the tractor. The difference exists, whether the tractor is electrically or gas operated. It appears that the "electric tractor operators," the employees involved here, are embraced within the stated Agreement as "tractor drivers" and for which the established and agreed to rate is 24 cents a day over and above the mail and baggage handler.

From a review of the record, we conclude the Carrier violated the Agreement as contended for by the Employees.

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 the claim should be sustained.

AWARD

Claims 1, 2, and 3 sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois this 3rd day of December, 1954.