

Award No. 16427
Docket No. MW-16413

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Jerry L. Goodman, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

**SOUTHERN PACIFIC COMPANY
(Pacific Lines)**

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

(1) The Carrier violated the Agreement when, on November 5, 1964, it failed to advertise (bulletin) positions of Ballast Cleaner Operators on Ballast Cleaners 4R and 5R. (Carrier's File MofW 16-126.)

(2) The Carrier further violated the Agreement when it failed to compensate Messrs. Ray Hernandez and Truman Green at the Ballast Cleaner Operator's rate of pay while assigned to operate Ballast Cleaners 4R and 5R beginning November 8, 1964.

(3) Messrs. Ray Hernandez and Truman Green each be allowed a per diem allowance of Four Dollars and be paid the difference between the Ballast Cleaner Operator's rate of pay and the rate they were paid for all time, including overtime, worked on Ballast Cleaners 4R and 5R beginning with November 8, 1964, and for each day subsequent thereto until these positions are properly bulletined, assigned and the successful applicants placed thereon.

(4) (a) The Carrier shall be required to now bulletin the two positions of operators of Ballast Cleaners 4R and 5R and

(b) The successful applicants be paid the difference between the Ballast Cleaner Operator's rate of pay and the rate at which they were paid for all time worked on Ballast Cleaners 4R and 5R, including overtime, from November 5, 1964 until the positions are bulletined, assigned and the successful applicants placed on the positions.

EMPLOYEES' STATEMENT OF FACTS: Commencing on November 5, 1964, the Carrier placed Ballast Cleaners R-4 and R-5 in service on its San Joaquin Division. The Carrier did not bulletin ballast cleaner operator's posi-

ferred to as Claimants), were assigned to the Undercutter Helper positions on the Kershaw Undercutters 4R and 5R and for service performed on their respective assignments, claimants were compensated in accordance with the applicable rate of pay (\$2.3808 per hour) established therefor by letter agreement dated November 30, 1964 (Carrier's Exhibit B).

5. By letter dated January 16, 1965 (Carrier's Exhibit C), Petitioner's District Chairman submitted a claim to Carrier's Division Superintendent in behalf of claimants Hernandez and Green for the difference in pay between that which they received and that of Ballast Cleaner Operator retroactively 60 days from the date of claim and all subsequent days, until the positions of Ballast Cleaner Operator is advertised for bid and assigned to the senior applicants.

By letter dated January 19, 1965 (Carrier's Exhibit D), Carrier's Division Superintendent denied the claim.

By letter dated January 24, 1965 (Carrier's Exhibit E), Petitioner's District Chairman rejected the Superintendent's decision.

By letter dated March 1, 1965 (Carrier's Exhibit F), Petitioner's General Chairman appealed the claim to Carrier's Assistant Manager of Personnel, amending the claim to commence November 8, 1964, and, in addition thereto, that claimants be allowed a per diem allowance of \$4.00 per day from November 8, 1964. In addition to paying claimants Hernandez and Green the difference in rate of pay from November 8, 1964, Petitioner's General Chairman added to the claim that "successful applicants be paid the difference between the Ballast Cleaner Operator's rate and the rate at which they were paid for all time worked" from November 5, 1964.

By letter dated August 12, 1964 (Carrier's Exhibit G), Carrier's Assistant Manager of Personnel denied the claim.

(Exhibits not reproduced.)

OPINION OF BOARD: Initially, we must resolve certain procedural questions.

The record establishes that the original claim dated January 16, 1965, seeking the Ballast Cleaner Operator rate for a retroactive period of sixty days prior to the date of the claim was not received by the Carrier until January 19, 1965. Consequently, the retroactive period for which said rate is sought must be limited to sixty days prior to January 19, 1965, the date the claim was received by the Carrier. National Disputes Committee Decisions 16 and 21.

The record further establishes that those portions of the claim embodied in paragraphs numbered 3 and 4 (b) were added subsequent to the completion of the handling of the claim at the first level. We cannot, therefore, consider them.

Thus, we proceed to a consideration of the merits of the claim as it is embodied in the remaining paragraphs numbered 1, 2 and 4(a).

Since 1954, the Agreement between the parties has contained the classification of "Ballast Cleaner Operator" and the rate of pay therefor.

In 1964, Carrier acquired an Undercutter machine, together with a Ballast Cleaner machine which could be attached for the purpose of cleaning the

ballast removed by the Undercutter. In the same year, the Agreement between the parties was amended to create the classifications of Undercutter Operator and Helper and the rates of pay for each.

Thereafter, Claimants were assigned as Undercutter Helpers and in such position operated the Ballast Cleaner machine while it was connected with the Undercutter.

The dispositive issue to be resolved is whether the work of operating the Ballast Cleaner machine while the same was connected with the Undercutter machine required the assignment of a Ballast Cleaner position.

Carrier argues that the Undercutter with the Ballast Cleaner attached is a single machine which integrates the function of undercutting and ballast cleaning into one combined function; that in recognition of this fact, the parties agreed to the creation of the Undercutter Operator and Helper classifications to perform this function.

Organization argues, on the other hand, that even when operated together, the Undercutter and Ballast Cleaner each perform separate and distinct functions; further, that the operation of the Ballast Cleaner machine requires the constant attention of an individual Ballast Cleaner Operator.

We agree with the Organization based on our examination of the record. Carrier's contention that the Ballast Cleaner machine is primarily operated by the Undercutter Operator is refuted by the evidence. Such evidence indicates that the Ballast Cleaner machine has its own panel of controls located on it which must be operated in order for the machine to perform its ballast cleaning function. We hold, therefore, that this is work belonging to the classification of Ballast Cleaner Operator, and should be bulletined in accordance with Rule 10 of the Agreement.

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 Employee involved in this dispute are respectively Carrier and Employee 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 Agreement was violated to the extent indicated herein.

AWARD

Paragraphs 3 and 4 (b) of the Claim are dismissed.

Paragraphs 1, 2 and 4 (a) of the Claim are sustained to the extent indicated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 18th day of June 1968.

Keenan Printing Co., Chicago, Ill.

Printed in U.S.A.