

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21877  
Docket Number MW-21312

Nicholas H. Zumas, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employes**  
(The Texas and Pacific Railway Company

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

(1) The Agreement and practice thereunder were violated when the Carrier failed and refused to compensate Roadway Machine Operators D. M. Turner and O. J. Watson at the rate of \$5.1260 per hour for services performed in the operation of Burro Cranes on seniority districts where such rate is applicable to such service (System File K-310-115).

(2) A differential of **\$.3565** per hour shall **now** be paid to

- (a) Claimant Turner for 648 hours for service performed on Gulf District at Valley Junction from April 2, 1973 through July 27, 1973  
and to
- (b) Claimant Watson for 176 hours for service **performed** on the Missouri Pacific Lines in October and November, 1973.

OPINION OF BOARD: Claimants herein were Roadway Machine Operators employed by Carrier. On the claim dates in question they **were** assigned to perform burro crane work in the Gulf District of the Missouri Pacific Railroad. The rate of pay allowed for burro crane operation is approximately 35 cents an hour more on the Missouri Pacific, and Claimants herein seek the differential. The Organization contends that Claimants are entitled to the **higher** rate under Rule 28 when they were assigned to perform work where **the higher** rate is applicable. The Organization also asserts that prior settlements on this property under identical circumstances interpret Rule 28 in favor of the Organization.

Carrier **contends** that **Claimants** were not performing work of a higher rated **position** and are therefore not entitled to the higher pay. With respect to prior settlements, Carrier takes the position that they were made by a Superintendent in the Operating Department and cannot be binding on Carrier.

Rule 28 provides:

"An **employee** assigned to work on a higher rated position thirty (30) minutes or more, but less than one (1) hour, will be allowed the higher rate for the full hour, and thereafter will be paid the higher rate on the minute basis for the full time worked on the higher rated position."

There is nothing in this record to indicate that Carrier, at any time during the handling on the property, rejected the Organization's assertions that the prior settlements were binding, nor did it take the position that the settlements were made by Carrier officials who had no authority. These contentions are advanced for the first time before this Board.

**On** the basis of the record before it, the Board must sustain the claim.

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

That the parties waived oral hearing;

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

The **Agreement** was violated.

A W A R D

Claim sustained.

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

ATTEST:

A. W. Pauls  
Executive Secretary

Dated at Chicago, Illinois, this **31st** day of January **1978**.