

Award No. 1391

Docket No. MW-1418

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Royal A. Stone, Referee

**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES  
NORTHWESTERN PACIFIC RAILROAD COMPANY**

**STATEMENT OF CLAIM:** "Claim of the General Committee of the Brotherhood of Maintenance of Way Employees, that Mr. Walter E. Thompson be compensated at the rate of \$175.20 per month (204-hour basis), in accordance with provisions of Rule 48 of Agreement, effective January 15, 1939, for work performed as crane engineer, February 6th to April 29th, inclusive, 1939, excluding Sundays and holiday (Washington's Birthday, February 22nd, 1939), and days absent from work during the month of March when Mr. Thompson laid off on his own account."

**EMPLOYEES' STATEMENT OF FACTS:** "From February 1st, 1939, until February 4th, 1939, inclusive, Mr. Walter E. Thompson was employed as Adzing Machine Operator, for which he was correctly compensated at the rate of 65¢ per hour in line with Rule 48.

"However, on February 6th, Mr. Thompson's duties were changed to that of Crane Engineer, operating a Burro Crane. For this work Mr. Thompson was paid at the rate of 65¢ per hour. Rate for Crane Engineer (class of energy not stated) is \$175.20 per month, as appearing in Rule 48.

"Mr. Thompson continued in this latter classification continuously until April 29th, 1939, with the exception of six days during the month of March, 1939, at which time he laid off for personal reasons.

"Paragraph (c) of Rule 36, reads as follows:

"When an assigned employe is required to fill the place of another employe receiving a higher rate of pay, he shall receive the higher rate; but if required to fill temporarily the place of an employe receiving a lower rate his rate will not be reduced." (Underscoring ours.)

"Rule 48 shows equipment operator's rates as follows:

Classification	Rate of Pay		
	Hourly	Monthly	
Adzing Machine Operators	\$ .65		
Ledgerwood Operators	" .54		
Crane Helpers	.44		
Steam Gas Shovel Engineers		\$210.20	204-hour per month basis
Crane Engineers		175.20	"
Steam Shovel Cranemen		175.20	"
Bulldozer		158.20	"
Donkey Engineer		137.00	"
Pile Driver Engineers (operating donkey engines)		137.00	"
Steam Shovel Firemen		135.20	"
Crane Firemen		120.20	" "

"Memorandum of Agreement, effective January 15, 1939, reproduced in full as Carrier's Exhibit 'A,' attached hereto and made a part of this submission, contains the following:

**'Does not apply to, nor include** within the scope of said Agreement, Engineers, Firemen and **Operators of self-propelled machines**, which are operated by self-propulsion on track rails used for the operation of locomotives, cars and trains.' (Emphasis ours.)

"This clearly shows that operators of self-propelled machines, which includes Burro Cranes, are not included in the Maintenance of Way Employees Agreement of January 15, 1939.

### CONCLUSION

"It is the Carrier's contention that the Board is without jurisdiction to consider the alleged claim, for reasons heretofore offered.

"It is the further contention that the position of Burro Crane Operator is not the same as a Crane Engineer, and that rate of pay applying to Crane Engineers does not extend to Burro Crane Operators. The claim of Petitioner is without merit and should be declined. Furthermore, positions of Burro Crane Operator are definitely excluded from the Agreement."

**OPINION OF BOARD:** In a narrow and literal sense this claimant is a "crane engineer." He does operate a crane but whether, within the terms of the Agreement, he is an engineer is another matter. One who operates an automobile is not ordinarily considered an engineer. The whole Agreement must be scanned, all of it considered in order to answer the question. The Referee's conclusion is that this claimant was not an engineer within the meaning of the Agreement.

The contract (of Jan. 15, 1939) on Page 3 established for Group B the following classes for purposes of seniority:

Engineers of Ditchers, Steam and Gas Shovels.  
Firemen of Steam Ditchers, Steam Shovels and Steam Cranes.  
Crane Operators, Cranemen, Shovel Pitmen, Crane Watchmen,  
Crane Helpers.  
Watchmen of Ditchers, Steam and Gas Shovels.

To allow this claim would classify the operator of a Burro crane in the first class with engineers of ditchers, steam and gas shovels for purposes of seniority.

Taking the Agreement as a whole, it is impossible to conclude that the intention was to put the operator of a Burro crane in the same class with engineers of ditchers, steam and gas shovels for purposes of seniority. If the claim were allowed, claimant would get the same pay as a full-fledged engineer, who, as already indicated, has served as fireman and has one under his supervision. He would get the same pay also as a steam shovel craneman and substantially more than a bulldozer whose position requires more of training and skill than that of the operator of a Burro crane.

It has been said in argument that the Burro crane has come into use since the effective date of the Agreement. If that be so, it may be that a new class of crane operators has come into being whose particular case is not covered by the Agreement. But, in any event, for the reasons stated it is impossible to hold that the operator of a Burro crane is intended by the Agreement to be put into the same class, either for pay or seniority, as the much more experienced and more highly skilled engineers of ditchers, steam and gas shovels.

**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 employe involved in this dispute are respectively carrier and employe 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 for the reasons stated, no violation of the Agreement has been found.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson  
Secretary

Dated at Chicago, Illinois, this 16th day of April, 1941.