

Award No. 1688
Docket No. MW-1715

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Sidney St. F. Thaxter, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY**

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood—

"First; that the Carrier violated the agreement of November 29, 1939, in applying the monthly rate of \$155.20 to the position of operator of the Caterpillar Speeder Crane when such machine was used as a dragline.

"Second; that the employe assigned as operator of the Caterpillar Speeder Crane, when used as a dragline, be paid the difference between what he received at the monthly rate of \$155.20 and what he should have earned at the monthly rate of \$185.20 retroactive from May 23, 1940."

EMPLOYES' STATEMENT OF FACTS: "The Carrier issued a bulletin calling for bids for the position of operator on a Diesel dragline which was to be placed in service at Ralston, Nebraska. The bulletin specified a rate of \$155.20 per month.

"The rates in effect and agreed to between the Committee representing the Employes, and the Carrier, provide for \$185.20 per month for position of dragline operator. The rate of \$185.20 became effective November 29, 1939."

POSITION OF EMPLOYES: "It is the position of the Employes that the Carrier placed in effect an arbitrary rate of \$155.20 per month for the operator on the Diesel dragline in violation of the rate specified as the agreed-to rate for this class of service.

"There is in effect on the Burlington Railroad an 'agreed-to' classification of rates which definitely provides that dragline operators shall receive \$185.20 per month. The Employes feel that the Carrier has violated the provision of the classification of rates in that it has failed to pay the rate to the operator of this machine, causing a reduction in the monthly earnings of dragline operators in the amount of \$30.00 per month.

"The Employes wish to offer as Employes' Exhibit 'A' the attached memorandum of agreement covering rates for roadway equipment operators, which rates were agreed to by the Committee of Employes and representatives of the Carrier, dated November 29, 1939. This exhibit clearly indicates that the rate for dragline operators is \$185.20 per month. No other agreed rate exists for this class of work.

"Any departure from the agreed-to rate between the Carrier and its Employes constitutes a violation of the agreement. Since both parties agreed

POSITION OF CARRIER: "As stated in Management's Statement of Facts, this machine is constructed with a caterpillar tractor and Diesel engine, and is of full revolving type, and, like all other machines of this character, it may be converted to various uses, and is very similar in its operation and adaptability to the full revolving American Eagle crane in use on this railroad, on which the operator is paid a monthly salary of \$155.20 in conformity with the above quoted-agreed-to rates, and while it may be used as a dragline it is not at all comparable to the draglines now in service; is not as complicated as to operation of maintenance, and is suitable for only the lighter types of work.

"The rates of pay of B. & B. Equipment Operators, quoted in our Statement of Facts, were agreed upon for specified types of machines, and in addition thereto the rate of \$155.20 per month was specified and agreed to for operators handling 'Other Machines' in the B. & B. Department. The Speeder Crane is not of the same class and is in no way comparable to Machines Nos. 204279, 205204, or 204612, for which a rate higher than \$155.20 was agreed to; in fact, its capacity is far below that of all 'Other Machines' in use on this railroad, for which a rate of \$155.20 was agreed to. A lower rate than \$155.20 would be appropriate compensation for the operator of this machine, but because the provisions of the agreement provided a minimum rate of \$155.20 for 'Other Machines' that rate was authorized and paid.

"Furthermore, as the Board will observe, all the rates covered by agreement were fixed according to the kind of machine operated and not, as the Committee is apparently contending, on the kind of work on which a machine is used, and the Committee's contention that a different rate of pay should apply for each different kind of work on which a machine is used is not in conformity with the agreement.

"In conference the Committee stated, 'We feel that the size of the machine does not alter the circumstances or rates of pay as agreed to in the table of rates signed at Chicago, Illinois, November 29, 1939. The table of rates contains the following provision: "This rate will also apply to service in event this type of machine is propelled by Diesel, electric, gasoline, or other form of energy."' The Board's attention is directed to the fact that the above footnote refers only to Steam Shovel Operators, as quoted in Management's Statement of Facts.

"As a matter of fact, the instant claim is similar in principle to the claim denied by the Third Division in its Award 1391, the only exception being that there is involved in this claim an agreed to rate applicable to 'Other Machines' and as a Caterpillar Speeder Crane is not specifically identified in the agreement, it can only be classified as an unidentified machine and therefore 'other' than those machines which are specifically identified.

"It is the position of the Management that the rate for the operator on this small Caterpillar Speeder Crane should be and was properly classified as 'Operators other machines—\$155.20 per month.'"

OPINION OF BOARD: A most careful analysis of the record and the supplementary exhibits satisfies us that we should not attempt to decide this case on what is now before us.

Under schedules in force November 29, 1939, a rate of pay was established for a "Dragline Operator" of \$185.20 per month. Varying rates were also set up for the operators of other types of machines specifically enumerated such as steam shovel operators, ditcher operators, clamshell operators, etc. There was also established a rate for "Operators Other Machines" of \$155.20.

For some period of time after May 23, 1940 the employees here involved operated an improved type of machine known as the "Caterpillar Speeder Crane" which was adaptable to a number of different uses, one of which

was as a dragline. This particular machine was apparently not on the market and hence not in the contemplation of the parties when the pay schedules were drawn up. The carrier paid the employes on the basis that he came within the classification, "Operators Other Machines." The System Committee claims that during the time he was operating this machine as a dragline he was entitled to be paid as a "Dragline Operator."

In a letter dated September 23, 1941, this board requested the parties to furnish additional information illustrating various uses to which certain types of machines, including dragline machines and the machine involved in the present dispute could be put. This information came in the form of a letter signed by both parties identifying certain accompanying pictures of machines, and illustrations and plans of others contained in catalogues, among which are pictures and plans of ordinary dragline machines similar in design to those in use by the carrier and pictures of the new machine here in question. These do not, however, in and of themselves provide sufficient data to enable us to decide the problems before us.

The carrier bases its contention that the employe is not entitled to the higher rate of pay on the fact that the new machine, being much lighter than the ordinary dragline, has much less capacity. This is not, however, necessarily controlling; and it must be remembered that mere improvements in the type of machine even though radical do not require a change in the operator's classification. The System Committee base their claim for the higher pay on the showing that the Caterpillar Speeder Crane is capable of doing the work of a dragline and for a time did such work. But these facts alone are not decisive, for it may well be that a machine of one kind is able to perform work ordinarily done by a machine of a distinctly different type.

We are of opinion that this Board should have more facts about this machine in question and in what respects other than in size it is claimed to be different from the ordinary dragline. We should know as to its effectiveness in doing dragline work. This information is necessary to enable us to determine intelligently whether this employe during the period in question was in fact a dragline operator.

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 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 this case must be remanded for a more complete record.

AWARD

Case remanded for a more complete record.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 19th day of January, 1942.