

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Herbert B. Rudolph, Referee

PARTIES TO DISPUTE:

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

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

First: That J. J. Small, Cyrel Putte, and Karl Scholz, Adzing Machine Operators employed in the system rail laying gang, be paid the difference between what they received as adzing machine laborers at \$.3222 per hour and what they should have received at the adzing machine operator's rate of pay of \$130.20 per month on all dates that they were assigned to operate adzing machines between April 8 and October 1, 1940;

Second: That J. J. Small and Cyrel Putte be paid the difference between what they received at adzing machine laborer's rate of 35 cents per hour and what they should have received at adzing machine operator's rate of pay of \$130.20 per month on all dates that they were assigned to operate adzing machines in the steel laying gang retroactive to October 1, 1940.

EMPLOYEES' STATEMENT OF FACTS: J. J. Small entered the service as extra gang laborer in the system rail laying gang on April 8, 1940. Small, being an experienced adzing machine operator, was assigned by Assistant Roadmaster, R. P. Johns, to operate the adzing machine on his first day of employment.

Cyrel Putte was an experienced adzing machine operator and was assigned by Assistant Roadmaster R. P. Johns to operate the adzing machine beginning April 29, 1940. He continued in this capacity for several months, when he resigned to accept a higher rated position with another company.

Karl Scholz began work in the system rail laying gang during the month of April 1940, as an extra gang laborer, and was assigned by Assistant Roadmaster R. P. Johns to operate the adzing machine on May 1, 1940. Karl Scholz continued in this capacity until June 10, 1940, when he was discharged by the Assistant Roadmaster for entering a complaint to the J. J. Greer Company regarding the quality of food being served.

No complaint has ever been made by any supervising officer in regard to the services of the claimants.

Rule 52 (b) of the agreement between the Chicago, Burlington & Quincy Railroad Company and this organization provides as follows:

"An employe skilled in and assigned to the operation of a Roadway Equipment machine, and capable of making necessary running repairs on such machine, will be classed as a Work Equipment Machine Operator."

Division seniority (Grand Division is the territory under the jurisdiction of a General Manager)."

These employees are classified as Work Equipment Machine Operators because they are skilled in and assigned to the operation of roadway equipment machines and are capable of making the necessary running repairs on such machines. They held their assignments in this particular gang in accordance with their seniority standing as work equipment machine operators. Their classification is provided for in schedule agreement Rule 52-b as follows:

"(b) An employee skilled in and assigned to the operation of a Roadway Equipment machine, and capable of making necessary running repairs on such machine, will be classed as a Work Equipment Machine Operator."

POSITION OF CARRIER: The Brotherhood of Maintenance of Way Employees agreed with the carrier for payment of the rates indicated in the foregoing Statement of Facts to the employees when assigned to the positions indicated. It is not now proper therefore, to contend for Roadway Equipment Machine Operator's rate of pay for Adzing Machine Laborers. The claimants were not work equipment machine operators in the sense provided for in the schedule agreement. They had no seniority whatsoever in the Roadway Equipment sub-department and they had no responsibility for the maintenance or the repair of the adzing machines. They performed only the functions recognized as those for which the adzing machine laborer's rate of pay was provided by agreement under date of November 29, 1939. It is significant that this practice of assigning and compensating the employees was in effect prior to and at the time of consummation of the agreement as to rates of pay, and the practice was continued thereunder. For ready reference these agreed-to rates are tabulated as follows:

TRACK SUB-DEPARTMENT:

Extra Gang Foreman	\$155.20 per month
Assistant Extra Gang Foreman	120.20 "
Floating Gang Foremen (15 men or less)	135.20 "
Cutting Torch Operator	.54 per hour
Spike Puller Laborers	.3222 per hour
Adzing Machine Laborers	.3222 "
Seasonal Extra Gang Laborers	.2722 "

ROADWAY EQUIPMENT DEPARTMENT (B&B SUB-DEPARTMENT):

Rail Layer Operator	\$130.20 per month
Spike Puller Operator	130.20 "
Bolt Tightener Operator	125.86 "
Bolt Machine Laborer	.2722 per hour
Adzing Machine Operator	130.20 per month

The claimants were, as indicated previously herein, only casual employees whose employment as seasonal extra gang laborers ceased upon completion of the rail-relaying work at the end of the 1940 summer maintenance season. The claim is obviously inconsistent with the plain intent and purpose of the agreement and should accordingly be denied.

OPINION OF BOARD: To restate the facts other than as they appear in the discussion to follow is unnecessary.

Claimants were classified by the carrier as adzing machine laborers, and paid as such. They now claim the right to be classified and paid as adzing machine operators.

Both parties are agreed that Rule 52 (b) governs this dispute. This rule is as follows:

"An employe skilled in and assigned to the operation of a Roadway Equipment machine, and capable of making necessary running repairs on such machine, will be classed as a Work Equipment Machine Operator."

Under this rule something more than the operation of a machine is required before an employe is entitled to be classed as a machine operator and paid as such. The rule requires that the employe not only operate the machine but that he be "capable of making necessary running repairs." There is no showing that claimants were capable of making the necessary running repairs. On the other hand there is the showing that these claimants possessed no knowledge of the adzing machine not possessed by other laborers on the gang, except such knowledge as was necessary for the operation and which was acquired by a brief instruction from the adzing machine operator. The record further shows that the adzing machine operator kept the machines in repair, sharpened the blades and was responsible for their efficient operation.

Claimants have failed to show that they met the requirements of Rule 52 (b).

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 employes involved in this dispute are respectively carrier and employes 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 record discloses no violation of the existing agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 17th day of April, 1942.