

Award No. 2853
Docket No. MW-2765

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Richard F. Mitchell, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
SOUTHERN PACIFIC LINES IN TEXAS AND LOUISIANA

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

- (a) That under the provisions of Agreement in effect employees assigned to assist adzing machine operators shall be classified and paid as machine operator helpers;
- (b) That employees assigned to assist adzing machine operators shall be paid the difference between what they have received as section laborers and that which they should have received as machine operator helpers retroactive to May 1, 1943.

EMPLOYES' STATEMENT OF FACTS: Article V of Memorandum of Agreement between Southern Pacific Lines in Texas and Louisiana and the Brotherhood of Maintenance of Way Employes, effective December 1, 1937, provides and sets forth rates of pay applicable to machine operators and machine operator helpers. At times the Carrier is assigning section laborers, classifying and paying them as such, as helpers to machine operators in the operation of certain machines, particularly adzing machines and cross grinder machines.

The agreement in effect between the Carrier and the Brotherhood is by reference made a part of this Statement of Facts.

POSITION OF EMPLOYES: As stated in Employes' Statement of Facts, Article V of Memorandum of Agreement between the Carrier and the Brotherhood, effective December 1, 1937, provides and sets out rates of pay for machine operators and machine operator helpers. We are submitting hereto as Employes' Exhibit "A" a copy of Article V of said Memorandum of Agreement.

It should be understood, of course, that the rates of pay spelled out in Exhibit "A" were the rates in effect at the time they were written into the Agreement, December 1, 1937. As will be observed, the Agreement of 1937 provides for a minimum of \$100.20 per month for the lowest paid machine operator helpers. Since 1937 an increase in the amount of \$20.40 per month was applied effective December 1, 1941, and an increase in the amount of \$18.36 per month effective December 27, 1943, making the present minimum rate for machine operator helpers \$138.96 per month.

As further stated in Employes' Statement of Facts, in spite of the fact that rates of pay have been agreed to and established for machine operator helpers, the Carrier at times is assigning section laborers as helpers to ma-

It will be noted that the general rules applicable to Maintenance of Way employes apply to roadway machine employes, except Articles 2, 3, and 5 thereof, and in the case of Article 2, Rule 5 applies. Article 8, which by the terms of Article 3 of the Roadway Machine Agreement, is applicable to the operation of Roadway Machines, contains the following provision:

"All laborers coming within the purview of this agreement not specifically covered in the foregoing tabulations to be paid the prevailing rate for section laborers on the district where employed.

"Established rates of pay now in effect for all classes of employes coming within the purview of this agreement, not otherwise provided for, such as pumbers, bridge watchmen and bridge tenders, highway crossing watchmen and/or flagmen, watchmen at railway non-interlockings, and lamp lighters and tenders are continued in effect under this agreement."

The adzers have been in use on these lines since 1929; they were in use when the Maintenance of Way Agreement was negotiated. Laborers coming within the provisions of that agreement were doing the same work in conjunction with the use of tie adzers at the time the agreement was negotiated as they are doing now. Rule 3 of Article 4 of the Roadway Machine Agreement reads as follows:

"It is understood that air compressors, mechanical tie borers, mechanical tie cutters and similar small power machines or tools may be assigned to B. & B. gangs and other gangs and operated by employes of such gangs, in which case the provisions of this agreement will not apply."

You will note that rule provides for the use of mechanical tie cutters by B. & B. gangs and other gangs, and for the operation of such machines by the employes of such gangs, in which case the provisions of the Roadway Machine Agreement do not apply. The Agreement specifically provides for the use of laborers not specifically covered in the tabulations to be paid the prevailing rate for section laborers on the district where employed. If laborers other than section or extra gang laborers should be used, that provision applies. The agreement specifically provides for the use of laborers with tie adzers or other machines, if they should be required, and the payment to be made to such laborers. There is nothing in the entire agreement that either specifies or requires the use of helpers on tie adzers, or for payment of other than the laborers' rate to laborers assisting in the use of the adzers.

The Board is referred to its Award 1775, involving the use of laborers with adzing machines on the C. B. & Q. Railroad. That case dealt with tie adzer operators, while this one deals with the assignment as helpers to assist the operators. In this case, there is no showing whatever of any rule that even remotely supports the contention of the General Chairman. Conditions that now obtain are the same conditions that existed at the time the current agreement covering and providing for such conditions was negotiated and signed. The contention of the General Chairman cannot be supported by rule or practice.

CONCLUSION: The Carrier has shown that the Organization is seeking a change of agreement and not an interpretation of the rules of the current agreement, and holds that this case is not, therefore, properly referable to the Adjustment Board. So far as the agreement is concerned, the complaint of the Organization is entirely without basis in rule or practice.

OPINION OF BOARD: No specific claims or complaints in respect to any specific occurrences are made. The claim of the Committee is in two parts: "(a) That under the provisions of Agreement in effect employes assigned to assist adzing machine operators shall be classified and paid as machine operator helpers." The second part of the claim simply asks for retroactive pay to March 1, 1943. Employes are relying on Article V of the Memorandum of Agreement which reads as follows:

"While rate of pay for helper is shown it is understood that where the officer in charge decides a helper is not needed, one will not be furnished."

The Carrier maintains that this rule does not apply because there is no "Helper or Fireman" rate listed for the machine here in question towit: Nordberg Tie Adzers. Upon the record as here submitted to us we do not need to, and do not, pass upon that question.

Before this Board is able to pass upon whether or not there was a violation of the Agreement there must be facts set out and proof offered to show a violation of the Agreement. There would have to be a showing that the men here were assigned to do this work and that the work they performed was helper work and not mere laborers' work. In this record there are no facts set out and none even alleged to show a violation of the Agreement.

This Division was confronted with a somewhat similar question in Award 1775. Speaking through Judge Rudolph as Referee, the Division said:

"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."

Thus we find in Award 1775 this Board held that the operation of the machine in itself by an employe did not require that the one operating it be classified as a work equipment machine operator because the rule provided that, in addition to being the operator, he must be "capable of making necessary running repairs." In that award the evidence showed they were operating the adzing machine but there was no evidence that they were capable of making the repairs and the Board denied the claim.

There being no evidence in this record that employes were assigned to helper service and performed helper service, an affirmative award is not justified.

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 there was no violation of the current Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 14th day of March, 1945.