Award No. 3706
Docket No. CL-3665

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Joseph L. Miller, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY

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

(a) The Carrier violated and continues to violate the intent and provisions of the Clerks' Agreement when it transferred the P. & H. "Caterpillar Crane" and the operator thereof, Rate $179.38 per month, from the Lumber Yard at Milwaukee Shops, Store Department, Milwaukee, Wisconsin, to another section of the Store Department and simultaneously created a position of Chauffeur, Rate seventy-four (74¢) cents per hour to perform the same duties with a new machine designated "Krane Kar" previously performed by said "P. & H." Crane Operator in the Lumber Yard.

(b) That said position now classified as Chauffeur be reclassified as Crane Operator and a rate of $179.38 per month, plus increases granted subsequent to July 28, 1939, be applied to such position.

(c) That all employes involved in or affected by this violation be compensated for wage loss suffered retroactive to July 28, 1939.

JOINT STATEMENT OF FACTS: For many years an Industrial Brownhoist, a Locomotive Steam Crane, operating on rails, with a lifting capacity of 10,000 pounds at 16 feet radius, was used in the Lumber Yard, Milwaukee Shops, Milwaukee, Wisconsin. The operator of this crane received the locomotive crane engineer's rate of pay—$169.18 per month.

About 1925, in addition to the "Brownhoist", a Fordson Tractor equipped with a rigid camel crane, commonly known as the "Giraffe", was placed in the Lumber Yard. The operator of that machine was classified and paid as a chauffeur at the rate of $.69 per hour. Each machine performed crane work in the lumber yard suited to its capacity and construction.

In the early part of 1931, the "Giraffe" was replaced with a gas-electric Elwell-Parker Crane and the operator was compensated at the Chauffeur's rate.

It will be noted that the employes' "Statement of Claim" makes request for "reinstatement of position of crane engineer, at Milwaukee Shops Store Department, Milwaukee, Wis., and employes affected reimbursed for net wage loss suffered retroactive to the date crane engineer's position was abolished". Discussion of the claim with the employes' representatives has developed the fact that the claim for alleged wage loss is retroactive to July 28, 1939, when the Carrier allegedly discontinued the use of one locomotive crane because of the discontinuance of the P. & H. Caterpillar Crane in the Lumber Yard. However, as the Carrier has indicated above, the use of the P. & H. Caterpillar Crane in that seniority district was not discontinued, nor was there an abolishment of a Locomotive Crane Engineer's position in that seniority district. The P. & H. Caterpillar Crane, when removed from the Lumber Yard, was transferred to another Store Department Yard at Milwaukee, in the same seniority district, and the Locomotive Crane Engineer's rate was also continued in effect. That fact is supported by the Joint Statement of Facts wherein it is indicated "the Carrier transferred the P. & H. Crane and operator thereof, rate then $179.38 per month, to another section of the Store Department". That fact is further supported by the following tabulation which shows the number of Locomotive Crane Engineer positions in existence in the Store Department seniority district at Milwaukee.

As of July 27, 1939*	As of July 28, 1939**	As of July 31, 1939***	As of July 24, 1940#
6 Positions	6 Positions	6 Positions	7 Positions

It will be understood, therefore, that at the time the Krane Kar was placed in the operation in the Store Department seniority district at Milwaukee, as the Locomotive Crane Engineer assigned to the P. & H. Caterpillar Crane continued to perform service on that machine in the same seniority district, there was no Locomotive Crane Engineer's position abolished, as contended by the employes, but rather an additional position created in the seniority district.

In its handling of this case the organization has made reference to Third Division N.R.A.B. Awards 864 and 1092 concerning which it is the Carrier's position that the situations involved in those awards are not at all comparable with the facts in the dispute with which we are herein involved.

The Carrier desires to emphasize the fact that as the P. & H. Crane and operator thereof was "transferred to another section of the Store Department to perform other crane work" and as the entire Store Department at Milwaukee is one and the same seniority district, no Locomotive Crane Engineer position was discontinued as the operator of the P. & H. Crane continued to perform service as a Locomotive Crane Engineer and at the rate of such position in his own seniority district, i. e., the Store Department at Milwaukee. Therefore, the Carrier maintains there was no "wage loss suffered" by any employe.

The Carrier asserts there is no basis for the claim and respectfully requests that same be denied.

The Carrier further asserts that there has been no violation of the provisions of the Clerks' Agreement as contended by the employes.

(Exhibits not reproduced.)

OPINION OF BOARD: On July 28, 1939, the Carrier transferred a P. & H. crane and the operator from the lumber yard of its Milwaukee shops to another section of the Store Department. At the same time a Krane Kar and operator were substituted in the lumber yard. The P. & H. Crane

---

* Date prior to effective date of claim.
** Effective date of claim.
*** First day of work in Store Department after effective date of claim. (July 29—Saturday—no work: July 30—Sunday no work).
\# Date claim was formally instituted.

operator received $179.38 a month. The Krane Kar operator got $.74 an hour. Both rates have since been increased.

The Organization claims violation of Rules 41 and 42 of the then effective agreement:

"Rule 41. RATES—NEW POSITIONS

"'The wages for new positions shall be in conformity with the wages for positions of similar kind or class in the seniority district where created."

"Rule 42. RATES DISCONTINUED

"Established positions shall not be discontinued and new ones created under a different title covering relatively the same class of work for the purpose of reducing the rate of pay or evading the application of these rules."

The Organization asks that the Krane Kar operator be given the P. & H. Crane rate, retroactive to the date of the change.

The Carrier denies any violation of Rule 41, contending that it fixed the Karry Krane operator's rate in accordance with this rule. Rule 42, the Carrier says, is inapplicable because no established position was discontinued. The P. & H. crane and its operator were merely transferred to another part of the Carrier's operations, while a "new position" was created to carry on the work previously done by the P. & H. operator. The Carrier further shows that the rate given the Krane Kar operator was the same paid the operator of an identical machine not only in the same seniority district, but, in fact, in the immediate vicinity.

The Carrier further contends that the Krane Kar is a "much smaller and more simply operated" piece of equipment than the P. & H. crane, and that the operator is thus deserving of a lower rate.

The Organization counters these contentions with the argument that a crane operator, at the higher rate, had for years done the same "work" that the Krane Kar "chauffeur" has been doing since the change; that there was no substantial change in the nature of the operation or in the requirements for the job when the equipment was changed. Invoking Rule 41, the Organization says that the Krane Kar operator's rate should be based on predecessor operator's rate because both did the same type of "work". However, the Organization bases its case largely on Rule 42, contending that the rate should be based on the "class of work" **accomplished** rather than on any other factors.

The Board feels that Rule 41 cannot properly be brought into this case. On the basis of the facts presented, we cannot see how any **new position** was created. Some one had been operating a crane in the lumber yard for years. A new man and a new piece of equipment were brought in to accomplish the tasks previously assigned to another man with a different piece of equipment. Rule 41 certainly does not contemplate such a situation.

We proceed, then, to Rule 42. Its obvious intent was to prevent the Carrier from reclassifying **the same job** downward to obtain the benefit of a lower rate of pay. Did the Carrier do that in this case? Or, in other words, is the operation of the Krane Kar **the same job** as the operation of the P. & H. and other cranes, for which the Carrier paid the higher rate?

The answers to those questions could be found partially in job evaluation—and that is still far from an exact science. The Organization's contention that the phrase "class of work" means only the end result of work must be dismissed. Job content is more important, although we hasten to add that the end result must be given due consideration. What are the relative skills required? What are the physical requirements? These, among other factors, must be weighed in any fair attempt to evaluate and relate different jobs or positions.

We find much more testimony before us in this case about the nature of the machines involved than we do about the nature of the work. Although this is not irrelevant, it still falls short of providing the answers.

Extremely relevant is the fact that another Krane Kar operator in the seniority district is receiving the chauffeurs rate (the lower rate) without any protest on the Organization's part. The Organization's sole defense on this score is that they are doing the same "work" (i. e., accomplishing the same results) as that performed by the operators of previous cranes which carried the lower rate.

The Board, however, is not here charged with fixing the rate of any Krane Kar operator other than the one working in the lumber yard. Whether it would prove to be practical industrial relations to pay different rates for corresponding jobs in the same plant is not for us to determine here.

For all the reasons stated above, and after weighing all the testimony as to the nature of the work involved in the operation of the Krane Kar as compared to the operation of the P. & H. and other larger cranes, we find that, in this case, there was not sufficient difference in the "class of work" to warrant a reduction in the rate of the operator's pay. Conversely, we find that the Carrier down-graded the job of crane operator in the lumber yard without sufficient justification, and in violation of the intent of Rule 42.

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 Carrier violated the agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 5th day of November, 1947.

DISSENT TO AWARD 3706, DOCKET CL-3665

This Award mistakenly applies the Agreement contrary to the facts, the mutually stated understanding of the parties that Rule 41, RATES—NEW POSITIONS, was applicable, and in contradiction of the definite provisions of Rule 42, RATES DISCONTINUED, relied upon to sustain the claim.

The facts, agreed to by the parties as shown in the record, are that prior to July 28, 1939, when this action took place, there were employed in the seniority district involved 6 locomotive crane operators on 6 locomotive cranes and 1 Krane Kar operator on 1 Krane Kar. Following the action taken on July 28, 1939, here subject of complaint, there were employed the same 6 locomotive crane operators on the same 6 locomotive cranes and 2 Krane Kar operators, one being the same operator of the same Krane Kar theretofore in the district, and one being an additional operator on the new

Krane Kar on that date placed in service. There was accordingly one additional position of crane car operator. An additional position is a new position factually and as intended and meant by the Agreement. To say that the New Position Rule 41 "does not contemplate such a situation" is palpable error.

The Opinion of Board discloses its erratic rejection of the mutual understanding of the parties that Rule 41 applies,—their difference being only that the Employes declared it to have been violated and the Carrier declared that its action was in compliance with the rule. Thus neither party held that Rule 41 was inapplicable.

Under such record of facts and understandings of the parties, the statement in the Opinion that "The Board feels that Rule 41 cannot be brought into this case" can but be termed capricious.

The Opinion found violation of Rule 42, RATES DISCONTINUED, in its statement that the "Carrier down-graded the job of crane operator in the lumber yard without sufficient justification, and in violation of Rule 42."

The rule provides that "Established positions shall not be discontinued and new ones created", etc. for certain purposes. In application to this dispute, that rule required acceptance of the fact of the creation of a new position, which the Opinion had theretofore rejected, but nevertheless proceeded to declare a violation because of alleged down-grading although such violation could be found only because of discontinuance of one position and creation of another. That situation did not exist factually; further, one part of that situation, viz., the creation of a "new position", had precedingly been rejected by the Opinion.

The disregard of facts and of the positions of the parties and the misinterpretation of the controlling rules of the Agreement here result in an erroneous Award.

/s/ C. C. Cook
/s/ R. H. Allison
/s/ A. H. Jones
/s/ R. F. Ray
/s/ C. P. Dugan

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Interpretation No. 1 to Award No. 3706

Docket CL-3665

NAME OF ORGANIZATION: Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes.

NAME OF CARRIER: Chicago, Milwaukee, St. Paul and Pacific Railroad Company.

Upon application of the representatives of the Employes involved in the above award, that this Division interpret the same in the light of the dispute between the parties as to its meaning and application, as provided for in Section 3, First (m), of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

> The Board intended that the operator of the Krane Kar should have been paid at the same rate (with increases added) that had been paid to the operator of the P. and H. Caterpillar Crane, when the Krane Kar operator was engaged in "relatively the same class of work" which had been or normally would have been performed by the P. and H. Crane operator had the P. and H. Crane not been replaced by the Krane Kar. This included work outside the Lumber Yard.
>
> Both the P. and H. Crane and its successor Krane Kar occasionally were used outside the Lumber Yard. Obviously, the Organization's use of the phrase "inside the Lumber Yard" in its claim was for purposes of identification.
>
> The Board, however, did not intend, in view of Rule 42 and the facts in this case, to apply the P. and H. Crane operator's rate to the operator of the Krane Kar when the operator of Krane Kar was engaged in relatively a different class of work than that which the P. and H. Crane operator had, or normally would have, performed.

Referee Joseph L. Miller, who sat with the Division as a member when Award No. 3706 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 30th day of June, 1949.