

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
ILLINOIS CENTRAL RAILROAD COMPANY

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

(1) Track Laborers Roosevelt Dillon and Cammie Wilson, Brookhaven, Mississippi, be allowed the difference in pay between what they received as Track Laborers and what they should have received at the Machine Operator's rate of pay while operating a tie adzing machine on the following dates:

Roosevelt Dillon—January 27, 28, 29 and 30, 1947.

Cammie Wilson—January 27 and 28, 1947.

EMPLOYEES' STATEMENT OF FACTS: On January 27, 28, 29, and 30, 1947, Track Laborer Roosevelt Dillon was assigned to operate a tie adzing machine that was being used in connection with rail laying work at Brookhaven, Mississippi.

On January 27 and 28, 1947, Track Laborer Cammie Wilson was assigned to operate a like machine at the same location.

Track Laborers Dillon and Wilson were paid at the Track Laborer's rate of pay instead of the Adzing Machine Operator's rate of pay for the days they were assigned to operate the tie adzing machines.

The Agreement between the two parties to this dispute dated September 1, 1934, and subsequent amendments are by reference made a part of this Statement of Facts.

POSITION OF EMPLOYEES: The Carrier does not dispute the fact that the two claimants did at least push these tie adzing machines on the dates in question. The whole point in dispute is whether or not the employe who, working alone, pushes this machine along the rail, is or is not a tie adzer operator.

It is the Carrier's contention that such an employe is performing laborer's work. The Employees contend he is operating the tie adzer and should be so paid in accordance with the schedule of rates of pay.

As of the date this claim arose, the track laborers on the Louisiana Division were being paid 75½c per hour. At this same time tie adzer operators were being paid 97½c per hour.

The man who pushes the tie adzer is supplied with and wears safety goggles and a pair of metal shin guards for his protection against flying particles when this machine is being operated. The operation of this tie adzer

port its position and that the claim is without merit and should be denied for the following reasons:

1. There has been no violation of the controlling agreement.
2. Claimants were performing work consistent with their classification (track laborer).
3. To grant this claim would require a change in the agreement which is a function beyond the jurisdiction of this Board.

OPINION OF BOARD: On the dates mentioned in the claim, claimants, track laborers, were engaged in rail laying work. They were assigned to pushing a tie adzing machine along the rail, stopping at ties needing adzing and lowering the cutting blades until they contact, lifting the same and moving on to the next tie. The Employees claim that claimants should be paid the rate of the position of tie adzer machine operator under the Composite Service Rule.

The position of tie adzer machine operator is not listed in the Scope Rule of the Agreement. It is clear, however, that a position so designated was in existence before the execution of the instant Agreement. The rate of the tie adzer machine operator's position at the time of this claim was 22c per hour higher than the section laborer's rate. The Agreement does not define any classification of machine operator. We have been cited no job classification definition nor bulletins outlining the duties or qualifications of tie adzer machine operator or any other machine operator.

It is clear that before we can determine claimants' asserted right to the higher rate, we must find out what the duties of a tie adzer machine operator are. Carrier's contention in this respect appears in the following quoted portion of their Position:

"Something more than merely pushing an adzing machine along the rail from tie to tie is required before an employee is entitled to be classed as a machine operator. A machine operator is required to sharpen bits extending downward from a revolving cutter head to adze out a level bearing surface on cross ties for tie plates. The machine is set by a machine operator for predetermined depth of cut, and the motor is started and running repairs are made by a machine operator. When bits become dull or broken, bits in the cutter head are replaced by a machine operator. Claimants merely push the machine along the track and/or assisted the machine operator in removing and replacing the machine for train movements, the same as they would do if riding a motor car with their section foreman and it was necessary to remove and replace motor car due to train movements. No skill is required for this work."

As to this, the Employees contend that it is the duty of the motor car repairman and his helper to keep the machines in running repair and that they make no contention that the claimants repaired or serviced the machines — they operated them.

We do not deem it necessary to a determination of the issue in this docket to completely resolve the conflict of fact between the Carrier and Employees' version of what constitutes the duties of a tie adzer machine operator. The record reveals that tie adzing machines have been in use on this property since 1932, and that it has been the practice since that time to use track laborers to push the machine along the rail in the manner described above. This, without prior complaint from the Employees. Certainly, that is some evidence of the fact that something more than the operation performed by the claimants in connection with the use of this machine is part of the duties of a tie adzing machine operator. In Award 1775, claims of laborers operating the machine for the payment of the rate of a tie adzing machine operator were denied. It appeared on that property that there was a rule which inferentially included the making of running repairs on the machine as part of the duties of the machine operator and required capability to make such repairs for classification as a machine operator. In Award 2853, the payment of a machine opera-

tor's helper rate to a laborer who operated a tie adzing machine was denied. In that docket, there was no specific rule defining or setting forth qualifications for machine operators. Those two Awards are not necessarily controlling of this particular dispute. However, when considered in addition to the practice on this property, they do lend weight to our conclusion that the duties of a tie adzing machine operator consist of something more than pushing the machine along the rail, making contact, lifting the blades, and going from tie to tie as the work progresses. There is no evidence that the claimants did more than that; hence, we have nothing upon which to base a finding that they performed the higher rated work. It follows that the claim must be denied.

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 Employees involved in this dispute are respectively carrier and employees 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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 28th day of March, 1950.