

Award No. 5155
Docket No. CL-4992

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Edward F. Carter, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES**

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY**

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

1. Carrier violated and continues to violate the requirements, provisions and intent of the Clerks' Current Rules Agreement when it unilaterally and arbitrarily established a rate of \$1.14¼ per hour for the position of Towmotor Lift Truck Operator at House No. 7, Fowler Street, Milwaukee, Wisconsin.
2. Carrier also violated and continues to violate the requirements, provisions and intent of the Clerks' Current Rules Agreement when it unilaterally and arbitrarily established a rate of \$1.16 per hour for the position of Mobilift Truck Operator at House No. 1, Union Street, Chicago, Illinois.
3. Carrier shall now be required to establish a rate of \$1.594 per hour on all positions of Towmotor Lift Truck Operator and/or Mobilift Truck Operator at the Freight Stations at Milwaukee and Chicago.
4. All such positions shall be rebulletined at the corrected rate and posted to all employees holding seniority in Districts 23 and 31 respectively.
5. All employees at Milwaukee and Chicago who have been adversely affected by the arbitrary action of the Carrier shall be reimbursed for all monetary loss sustained retroactive to the date each particular machine was placed in operation.

EMPLOYEES STATEMENT OF FACTS: Sometime prior to October 1947 (the exact date is not known by the Organization) the Carrier for the first time assigned a Towmotor Lift Truck to perform freight house work at House No. 7, Fowler Street, Milwaukee, and applied a rate of pay which was below the rate now requested for the position of operator of that lift truck.

At the time the Towmotor Lift Truck was assigned to work at House No. 7, all Lift Truck Operators employed on the Chicago, Milwaukee, St. Paul & Pacific Railroad Company and who came within and under the Scope and application of Clerks' Rules Agreement received a rate of pay (commonly referred to as the Chauffeurs rate) which is at present \$1.34 per hour. This was true regardless of the size, construction, capacity, type or trade name of the machine operated or the work performed. It was also true regardless of the department or seniority district in which the lift truck might be operated.

a rate of \$1.594 (current rate) to those employes in spite of the fact that the rate of \$1.462 (current rate) applies to the motormen at Galewood.

The Carrier contends there is no basis, under the schedule rules, for the employes' request and respectfully asks that the claim be declined.

(Exhibits not reproduced.)

OPINION OF BOARD: The Carrier placed a Towmotor Company Fork Lift Truck in operation at House No. 7, Fowler Street, Milwaukee, Wisconsin, on or about April 1, 1945. The rate of pay for the operator with wage increase is \$1.441 per hour. The Carrier also placed a number of Mobilift trucks in operation at House No. 1, Union Street, Chicago, Illinois, in September 1947. There are now four Towmotors, 20 tractors and 48 Mobilift trucks operating in the Chicago Terminal. The operators of tractors and Mobilift trucks are rated at \$1.462 per hour. Towmotor operators are rated at \$1.594 per hour. The dispute involves the correctness of the rates of pay of Towmotor and Mobilift truck operators.

The Agreement, effective January 16, 1946, provided as follows:

"RULE 18—RATES—NEW POSITIONS

The rates for new positions will be in conformity with rates for positions of similar kind or class in the seniority district where created. In the absence of a similar position in the district, the rate of pay for the new position will be established by agreement between the Carrier and the General Chairman."

It is the contention of the Carrier that Towmotor and Mobilift truck operators are similar in kind and class to motor truck operators. This contention makes a discussion of the nature and function of these machines essential to a proper disposition of the dispute.

All of the trucks referred to are self-propelled. The function of the motor truck is to pull four wheel trucks from place to place about the platforms and warehouses in the handling of freight. The Towmotor and Mobilift trucks are used to pick up pallets filled with freight on the forks protruding from the front and to transport and deposit the loads where wanted. They are equipped to handle freight from higher to lower and lower to higher levels within their mechanical limits. It appears that the Towmotor trucks are best fitted to handle machinery and other bulky freight. The Mobilift trucks seem best fitted to handle freight which has been stacked on pallets. It is readily apparent, and we so find that the pulling of loaded and empty trucks about the warehouses and platforms involves less skill on the part of the operator than does the handling of the Towmotor and Mobilift trucks. We do not think the operation of the motor trucks is the same kind and class of work performed by the operators of the Towmotor and Mobilift trucks.

The record shows Towmotor trucks were first used at Milwaukee in April 1945. The position of Towmotor truck operator was not created or bulletined until after Rule 18, current agreement, became effective. The Organization contends that if it had been created and bulletined prior to that time, the proper rate under the agreement would have been the rate fixed at Galewood, the rate for which the Organization now contends. The position at Milwaukee was first bulletined on October 28, 1947, after the failure to bulletin had been protested by the Organization. We agree with the Organization that the rate of the position should have been fixed in accord with Rule 18. The positions in question at Milwaukee are new positions and, there being no positions of similar kind or class in the seniority district where created, the second sentence in Rule 18 is controlling. The Carrier and the General Chairman not having agreed upon the rate bulletined, such rate (\$1.441) is not in accordance with Rule 18. The claim of the Organization requesting that this Board fix the rate at \$1.594 until the parties agree as required by Rule 18 is not well

taken. This Board cannot fix rates. It may merely declare the rate of a position as determined by the agreement. Consequently, we remand this portion of the case with directions to fix the rate in accordance with Rule 18 and to give retroactive effect thereto from and after October 28, 1947, the date the issue was raised.

With reference to that portion of the claim arising at House No. 1, Union Street, Chicago, Illinois, it appears that Carrier bulletined the positions of Mobilift truck drivers on September 2, 1947 at the motormen's rate of \$1.16 per hour. The Organization contends that the rate should have been \$1.27 per hour at that time. The latter rate is based on the fact that Towmotor operators in the same seniority district receive such rate and that the two machines are of the same kind and class within the purview of Rule 18.

Having determined that Mobilift operators perform work of the same kind and class as Towmotor operators and, it appearing that the rate of pay of Towmotor operators has been fixed at \$1.27 per hour in the seniority district where the claim arose, it follows that the correct rate of pay for Mobilift operators at House No. 1, Union Street, Chicago, was \$1.27 per hour at the time in question by virtue of Rule 18.

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 the agreement was violated.

AWARD

Claim (1) sustained per Opinion and Findings. Claim (2) sustained. Claim (3) sustained as to Chicago freight stations and remanded as to Milwaukee freight stations. Claim (4) sustained. Claim (5) sustained from and after October 28, 1947 as to Milwaukee and from and after September 26, 1947 as to Chicago.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 18th day of December, 1950.