Award No. 6878
Docket No. CL-6798

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

A. Langley Coffey, Referee

PARTIES TO DISPUTE:

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

GREAT NORTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes that the Carrier violated the Rules of our Agreement of June 15, 1947:

1. When in June 1952, the termination of the steel strike, the Carrier abolished a position known as Diesel Crane Operator, paying $351.52 per month, and substituted a position known as Carquake Machine Operator, paying $331.69 per month.

2. That the rate of $351.52 per month be re-established plus any adjustment subject to escalator clause since that date.

3. That any and all employes who operated this machine be compensated for wage loss sustained since the establishment of the Carquake position.

EMPLOYES' STATEMENT OF FACTS: For several years the Carrier had operated diesel engines which ran on the rails. These diesels were used to lift the car and shake it to loosen sticky ore to slide out of the car and into the pockets which loaded the boats on the docks. These engines required, through an agreement with the operating unions, pilot service because of the fact that they operated on the rails. The Carrier, in order to eliminate this pilot service, had new machines built which are called carquakes. They perform exactly the same work with the same, and probably more, efficiency than the diesel machines which were formerly used. The Carrier placed the first of these machines in operation the latter part of June 1952 and, as we have stated, arbitrarily placed a rate of $331.69 per month as the basic rate paid the operator of this machine.

POSITION OF EMPLOYES: It is the Employes' contention that the Carrier abolished a position and established a new one with the same duties and responsibilities as the position abolished, and reduced the rate of pay of the operator of the machine from $351.52 to $331.69. The Agreement between the Carrier and the Employes contains the following rules:

"RULE 1: Seniority begins at the time an employe's pay starts. Where two or more employes enter upon their duties at

OPINION OF BOARD: On or about July 28, 1952, positions of "carquake operator" were advertised and established for first time and thereupon, were given same work assignment as that which had been the work of "diesel crane operators," a higher wage rated position.

In absence of an established wage rate for the advertised positions, Carrier adopted and used the same wage rate or its equivalent for "boat loaders," as basis for compensating "carquake operators."

Rule 23 permits and allows for wages of new positions to be established without conference or negotiations if in conformity with wages for positions of similar kind or class in the seniority district where created. But here no showing is made or even attempted that the position of "boat loader" is one of similar kind or class and we, therefore, dismiss from our further consideration any possible contention that the wage rate for "boat loaders" is a proper one for "carquake operators."

Petitioner, too, places some reliance on Rule 23 by saying that the position of "carquake operator" is identical to that of cancelled "diesel crane operator" positions with exception that the employe does operate a different kind of machine which, according to Petitioner, performs the same identical work with same efficiency, even better, than the position abolished. Also, Petitioner charges violation of Rule 24, which Carrier denies on premise that there has been a decrease in duties and responsibilities in connection with operating the new machine.

We have no quarrel with the viewpoint that duties and responsibility are matters to be considered in negotiating and bargaining on rates of pay if rules do not conflict. But this Board cannot negotiate nor bargain. It can only look to results of negotiations and the bargains that have been made, being content to interpret and apply rules on which agreement has been reached.

The intent of the cited rules is not difficult to ascertain. They are to implement and not to hinder collective bargaining. The object is to allow for new positions to be rated for wage purposes in conformity with wages for positions of similar kind or class without delays attendant on conference and negotiations. (Rule 23.) It is not intended that employes shall do and perform work of relatively the same grade or class at a lower rate of pay than that fixed by agreement. Neither can rate of pay be reduced except by agreement even though duties and responsibilities of a position have decreased or character of the service has changed. (Rule 24).

As an added safeguard against a reduction in rates of pay except by agreement, the parties have reached an accord that established positions will not be discontinued and new ones created under the same or different titles covering relatively the same class or grade of work, which will have the effect of reducing the rate of pay or evading the application of agreed on rules. (Rule 24.)

Rule 23 rates positions of similar kind or class for wage purposes. Rule 24 deals in part with grade or class of work, and in addition leaves with the parties the duty and responsibility to agree on any adjustment in established rates of pay brought about by an increase or decrease in the duties and responsibilities of a position or change in the character of service required.

We find very little in the record on which a finding could possibly be made that the job title "carquake operator" does not cover relatively the same class or grade of work. The only real difference, as the Petitioner says, is in the equipment operated. The "carquake" is the smaller of the two machines and appears to be, as the Carrier says, a large fork type lift truck with oscillating mechanism. Seemingly, the use to which it can be adapted is limited while the uses to which the diesel crane can be put are many and varied.

Depending upon use and work assignment, it is not difficult to see where operation of the diesel crane could entail the greater skill and responsibility. But here the use to which both machines is put is one of shaking cars to dislodge ore that is sticking to the sides of the cars.

The process is some different. The crane is equipped with a shakeout apparatus suspended from the boom. The boom operation normally is one of spotting and lowering the shakeout device onto top of the car and after same is made secure, lifting and shaking the car. The carquake attaches to the side of the car and shakes it.

In other respects the machines operate much the same and the job duties and responsibilities are relatively the same. One advertised position requires the employe to relieve on both machines and this is some indication that the same knowledge of operations is required.

Methods of doing the work and results are relatively the same. Both machines dislodge ore by vibrating cars. Each machine, for purpose used and results obtained, is recognized to be a "vibrating machine."

On the facts of record, it is found and determined that the job titles "carquake operator" and "diesel operator," as those terms are here used, cover relatively the same grade or class of work and no reduction in rate of pay was and is warranted under facts and circumstances shown by the record.

Claim will be sustained with an effective date of July 28, 1952, subject to amendments of record as to correct rates of pay.

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 agreement was violated.

AWARD

Claim sustained as amended, effective July 28, 1952.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 4th day of February, 1955.