

Award No. 12796

Docket No. MW-12321

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

ILLINOIS CENTRAL RAILROAD COMPANY

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

(1) The Carrier violated the effective Agreement when it assigned Section Laborer J. E. Russell to perform Chemical Spray Operator's work during the period from May 6, 1959 through June 15, 1959 and failed and refused to compensate him at the Chemical Spray Operator's rate of pay while so assigned.

(2) Mr. J. E. Russell now be allowed and paid the difference between what he received at the On-Track Mowing Machine Operator's rate and what he should have received at the Chemical Spray Operator's rate for the period between May 6, 1959 and June 15, 1959, both dates inclusive.

EMPLOYES' STATEMENT OF FACTS: During the period from May 6, 1959 through June 15, 1959, the Claimant, who was regularly assigned to the position of Section Laborer, was assigned to and did perform Chemical Spray Machine No. C S - 11.

While so assigned, the claimant was paid at the On-Track Mowing Machine Operator's rate instead of the Chemical Spray Operator's rate of pay.

The Agreement in effect between the two parties to this dispute dated September 1, 1934, together with supplements, amendments, and interpretations thereto is by reference made a part of this Statement of Facts.

POSITION OF EMPLOYES: Rule 28 reads:

"Rates of pay shown on rate sheets are the agreed rates of pay of employees covered by this agreement."

Under date of August 11, 1955, the following quoted Letter of Agreement was consummated:

have always been paid, without prior complaint, the Machine Operator's rate—a rate predicated upon the duties and responsibilities of such small road machines.

The claim is without merit and should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: In 1949 the parties by Agreement established a rate of pay for Chemical Spray Machine Operators. At this time Carrier had in operation Chemical Spray Machine, CS-6. In 1957 Chemical Spray Machine, CS-11, was also placed in service. Claimant, Mr. J. E. Russell, operated Chemical Spray Machine, CS-11, from May 6, 1959 to June 16, 1959. He received On-Track Mowing Machine operator's rate of pay but claims that under Rule 28 he was entitled to the rate of pay listed for Chemical Spray Machine operators.

Carrier argues that when the Chemical Spray Machine operator rate of pay was agreed upon in 1949 the contracting parties intended it to be applicable to the large CS-6, self-propelled equipment, which requires an operator who must mix and spray solution to kill weeds as well as to perform the duties and responsibilities for the maintenance of this heavy, complex, and expensive equipment. It points out that the CS-11 machine used by Claimant Russell is not comparable to the CS-6 unit in size, complexity, and requirement of skills for operation; therefore, Carrier urges it was proper to pay Mr. Russell the same rate given to operators of the comparable, less complex machine, namely, the On-Track Mowing Machines.

Both the CS-6 and the CS-11 are chemical spray machines and are used for the same purpose, that of spraying chemical compounds for the destruction and control of weeds and brush along the tracks. Whether he operates the CS-6 or the CS-11, the employee is responsible for the effective performance of the machine under his direction for the same purpose. The difference between the CS-6 and the CS-11 are differences in degree and not in kind. Although we appreciate that the CS-11 machine is not as large or as complex as the CS-6 machine, mere difference in size and complexity does not take the employee who operates the machine out from the rule of a chemical spray machine operator and makes him subject to the rate of pay of an On-Track Mowing Machine Operator. No doubt, Carrier gave consideration to the construction and operation of the CS-6 machine in determining the rate of pay for the operator of this equipment, but the rule does not recite that the rate is applicable to operators of Chemical Spray Machines of this type of construction only; it simply designates the rate of pay for chemical spray machine operators.

Since only one rate of pay exists for chemical spray machine operators and since Mr. Russell functioned in this capacity, he is entitled to the difference between that which he was paid as an On-Track Mower and the rate of a chemical spray machine operator.

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

The Agreement of the parties was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of July 1964.