

Award No. 18403

Docket No. MW-18743

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
PORT TERMINAL RAILROAD ASSOCIATION**

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

(1) The Carrier violated the Agreement when it discontinued paying Machine Operator Mathew Gill at the bolt machine operator's rate for work performed in operating a bolt machine and paid him therefor at the welder helper's rate of pay. (System File MW-69-1).

(2) The appeal presented by First Vice Chairman T. G. Hawkes, Jr., within his letter* of May 8, 1969, should have been allowed as presented because Manager of Personnel R. W. Best failed to give a written reason for his disallowance thereof.

(3) Machine Operator Mathew Gill and/or his successors be allowed the difference between what should have been paid at the bolt machine operator's rate and what was paid at the welder helper's rate of pay for each day, beginning with January 17, 1969, that the violation referred to within Part (1) of this claim continues to exist.

(*) This letter will be quoted within the Employee' Statement of Facts.

EMPLOYEES' STATEMENT OF FACTS: During the latter part of 1968, Roadmaster Buchler assigned the claimant to perform the work of operating a bolt machine. Ever since the Carrier purchased its first bolt machine, the operator thereof had been compensated at the machine operator's rate of pay. The claimant received this rate of pay also until January 17, 1969, at which time he was advised that he would thereafter be compensated at the welder helper's rate of pay (Prior to recent percentage increases, the welder helper and section laborer's rate was .28 cents per hour less than the machine operators rate).

The claimant objected and requested that he be permitted to work as a section laborer. The Carrier refused to grant his request and advised him if he did not operate the bolt machine "he would have to go home." The claimant continued to operate the machine and was compensated therefor at the lower welder helper's rate of pay.

The claim filed in his behalf was subsequently appealed to Manager of Personnel R. W. Best within a letter reading:

tools and have been in use many years by carrier's maintenance of way employees.

Bolt tightening machines are nothing more or less than a power operated tool. They are not roadway machines. The bolt tightening machines consist of a small gasoline engine geared to a wrench, and the gearing arrangement is so fixed that when the tension reaches a certain point, by reason of the nut becoming tight on a track bolt, the wrench is disengaged from the power plant. These machines are not self-propelling. They roll and work on one rail with a small balancing arm with a wheel attached extending to the other rail.

These power bolt tighteners are actually classed in the same class with tie adzers, spike pullers, spike drivers, drills, saws and tampers. They are not classed as roadway machines, such as ballast drainage cars, burro cranes, pole drivers, large weed burners and mowers.

The current agreement does not provide for Bolt Machine Operator's rate as alleged in Item (1) of Employee Claim, nor has it ever contained such a rate.

(2) Mr. R. W. Best apprised the organization by letter on July 7, 1969 (See carrier's Exhibit A) and in conference of his decision declining claim. This letter was written in answer to Mr. Hawkes' letter of May 8, 1969 (see Carrier's Exhibit B) which during the interim was discussed in conference between Mr. Hawkes and Mr. Best at which time it was agreed to hold in abeyance for further study and handling in conference. (See Carrier's Exhibit C Mr. Hawkes' letter of August 15, 1969). Mr. Hawkes' letter of September 5, 1969 (Carrier's Exhibit D) requested a letter confirming the conference and offer made. Mr. Best complied with Mr. Hawkes' request in letter dated September 5, 1969. (See Carrier's Exhibit E). Carrier bargained in good faith to make an adjustment in an effort to settle dispute which organization declined. (See Carrier's Exhibit F). Claim was properly processed to your honorable Board evidenced by organization submitting same.

(3) Organization's contention that carrier's obligated to continue to pay improper rate is erroneous. Carrier is presently applying rate to position so worked in line with current agreement. The rate in the instant case was erroneously put in effect and remained so for some time. When error was discovered it was immediately corrected in line with verbal instructions issued by Mr. Buchler on January 17, 1969. Then after conference with Messrs. Tilley, Christy and Hawkes, it was confirmed as per the context of letter of Mr. Hedges dated March 7, 1969 (Carrier's Exhibit G). Case was properly handled to Superintendent Wimberly who declined in a letter to organization. (See Carrier's Exhibit H). After appeal to Personnel Manager Best and a conference was held (See Carrier's Exhibit E), and an offer was made in good bargaining faith to settle and the organization did not accept.

(Exhibits not reproduced.)

OPINION OF BOARD: For many years the Carrier has owned and operated a track bolt machine; the operator thereof had been compensated at the roadway machine operator's rate of pay, as per Rule 29 of the parties' Agreement. On January 17, 1969, Carrier notified the bolt machine operator that thereafter the rate of pay for operating the bolt machine would be at the welder helper's rate of pay. The Organization filed claim for difference

in rate of pay between that of welder and that of the roadway machine operator's rate of pay as agreed to under Rule 29. Carrier, in defense of the claim, argued that the roadway machine operator's rate of pay under Rule 29 covers larger on-track machines, such as: burro cranes, ballast drainage cars, pole drivers, etc., whereas the track bolt machine is nothing more or less than a small power operated tool.

The facts of record clearly show that the parties consistently considered the track bolt machine as a machine within the roadway machine class, and the parties' application remained unchanged through renegotiations of their Agreement.

Since only one rate of pay exists for operators of roadway machines and since the track bolt machine is within that group, employees operating the track bolt machine are, therefore, entitled to that contractual rate of pay. We, therefore, sustain this claim. Since we have sustained this claim on the merits, we need not discuss the procedural question raised by the Organization.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employee involved in this dispute are respectively Carrier and Employee 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

Claims (1) and (3) sustained.

Claim (2) dismissed in accordance with Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 19th day of February 1971.