

PUBLIC LAW BOARD NO. 7319

BROTHERHOOD OF)
MAINTENANCE OF WAY EMPLOYEES)
DIVISION – IBT RAIL CONFERENCE)
vs.)
CANADIAN NATIONAL/)
WISCONSIN CENTRAL RAILROAD)

CASE NO. 1
AWARD NO. 1

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

- 1. The question before Public Law Board 7319 is: ‘Pursuant to Rule 5 of the Agreement, WC/BMWE Agreement shall the rate of pay for the vacuum truck be Rate Grade 4 or Rate Grade 3 or an intermediate rate between Grade 4 and Grade 3?’**
- 2. The Organization’s position is that the appropriate rate of pay for the vacuum truck is at Pay Grade 3.**

FINDINGS:

Public Law Board No. 7319, upon the whole record and all the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that the Board has jurisdiction over the dispute herein; and that the parties to the dispute were given due notice of the hearing and did participate therein.

The background facts of this case are not in dispute. On April 29, 2009, the Carrier informed the Organization that it intended to use Organization forces to operate a piece of equipment known as a Vacuum Truck (Vac Truck) at various locations on the Wisconsin Central property. The Vac Truck had previously been provided and operated by an outside contractor.

The parties’ Agreement includes the following language concerning the creation of new positions:

Rule 5--Establishment of New Positions

- A. If a new position is established for which a rate of pay has not been agreed upon, the carrier will place the position in one of the**

general classifications, listed in Rule 3—Classification of Positions, and will establish a rate which is commensurate with the duties, responsibilities, characteristics and other requirements of said position. If the Organization does not agree that the rate of pay so established is commensurate with the duties, responsibilities, characteristics, and other requirements of the position, the General Chairman shall so notify the Company and thereupon the duly authorized representative of the Company shall meet with the General Chairman or such other representative specified by the Organization for the purpose of mutually agreeing upon a rate which will be satisfactory to both parties. In the event of failure to reach a mutual agreement on the subject, it will be submitted to arbitration . . .

The parties' Agreement also includes Rule 3, Classifications of Positions, which places all positions subject to the Agreement in one of several General Classifications. The classifications relevant to these proceedings are Machine Operator A and Machine Operator B, to which Pay Grades 3 and 4, respectively, attach.

Upon creation of the new Vac Truck operator position, the Carrier notified the Organization that it would be classified as a Group B machine, and Pay Grade 4 would apply to the employees operating the equipment. The Carrier's notice listed the general qualifications of the position as follows:

- US Operating Rules qualified
 - On Track Safety qualified
 - Valid Driver's license
 - CDL Class B
 - Commercial Motor Vehicle Medical Certificate
 - Must be able to drive commercial vehicle w/air brakes
 - Fall Protection for Engineering Employees
 - Operator must perform daily maintenance and minor repairs
- Successful applicant to receive Vacuum Truck Operation Orientation

The same qualification requirements apply to the 3 Way Dump Truck operator, which is classified as Machine Operator B, Pay Grade 4. The general qualifications requirements for the Boom Truck, a Machine Operator A position, Grade 3, include the additional requirements of crane fundamentals training, crane operation update, and Boom Truck-crane Operator Training.

The Organization contends that Pay Grade 3 should be associated with the operation of this equipment. The parties agree that the determination of the appropriate Pay Grade is the only issue before this Board for resolution.

The Organization asserts that there are several reasons Pay Grade 3 is appropriate. Most significantly, the Organization states, the duties and responsibilities of the Vac Truck are consistent with those of other Pay Grade 3 positions. The Organization states that Pay Grade 3 employees are responsible for both men and equipment under their charge.

The Organization points out that Pay Grade 3 employees operate some of the larger and more sophisticated equipment, designed to be used both on and off the track. The Organization asserts that the Vac Truck falls within this category. It notes that the Vac Truck has an empty vehicle weight of 46,000 pounds and a total capacity of 65,000 pounds, has two control stations and operates as a conventional, as well as on-track or hi-rail, vehicle. The skills and responsibility required for operating this vehicle, the Organization states, are comparable to those of other Pay Grade 3 operators.

The Organization notes, however, that size and complexity of the equipment are not the sole factor determining the appropriate Pay Grade. Employees in Pay Grade 3, the Organization states, assume additional responsibility not associated with Pay Grade 4. The Organization asserts that Pay Grade 3 employees must be qualified to obtain track authority and provide protection for themselves as well as any other employees assisting. The Organization also states that the Vac Truck is a one or two-man operation, and the principal operator must possess the same qualifications as Pay Grade 3 operators, and should thus receive the same pay. The Organization asserts that the Vac Truck Operator is required to possess a commercial driver's license, just like operators of the boom truck, Brandt truck tractor trailer and truck crane, Pay Grade 4 positions.

In addition to equity considerations under the controlling Agreement, the Organization notes that on the Carrier's Illinois Central property the Vac Truck is listed as a Group B machine, which equates to Pay Grade 3 under the instant Agreement. The Organization also asserts that the requested Pay Grade is in line with the pay rate for a similar position involving a different Carrier, the Lake Superior & Ishpeming Railroad Company.

The Organization concludes that the requested Pay Grade is the proper rate when compared to other positions under the applicable Agreement, that it is in line with the pay rate on another Carrier property and that it is similar to the rate under the Organization's agreement with another Carrier. Therefore, the Organization asserts that this rate should be assigned to the position in dispute.

The Carrier asserts that it has established the correct rate of pay for the position, given: 1) The clear language of the parties' Agreement; 2) the classification of the equipment involved; 3) the qualifications required in the bulletin for the operator; and 4) a legitimate comparison to other equipment requiring the same qualifications.

The Carrier asserts that the determination to include the Vac Truck in the Machine Operator "B" classification was based upon the qualifications required of the truck's operator. As the position's duties, responsibilities and characteristics are

contemplated by and within the qualifications, the Carrier states, those qualifications are controlling.

The Carrier points out that the qualifications for the Vac Truck operator are exactly the same as those for the 3 Way Dump truck, a tandem axle dump truck equipped with air brakes. Like the 3 Way Dump Truck, the Carrier states, the Vac Truck is a tandem axle truck equipped with air brakes, and properly belongs in Group B of the Machine Operator classification, as listed in Rule 3 of the parties' Agreement.

The Carrier states that the Pay Grades in the instant Agreement are predicated on the general qualifications applicable to the operator of the particular piece of equipment. In the on-property correspondence, the Carrier points out, the Organization attempted to create the perception that the Vac Truck is like the equipment in the Machine Operator A classification because it has a snorkel boom. However, the Carrier states, the Vac Truck boom is designed for only one purpose, movement and positioning of the suction tube. Conversely, the Carrier states, the classification A machines which are equipped with a boom or crane are all designed for, and capable of being attached to and lifting, varying other pieces of railroad equipment of varying weights and sizes. All of those machines required additional qualification requirements which are not required for the Vac Truck operator, the Carrier asserts. The bulletin for Group A Machine operators shows that those employees must have additional training in crane operations which are not required for this equipment.

The Carrier argues that, while the Organization noted the size and weight of the equipment in the on-property correspondence, it is the qualification requirements for the operator, not weight or size, which determine the appropriate Pay Grade. The Carrier does not dispute that Vac Truck operators on its Illinois Central property are paid at the higher rate, but asserts that the IC-BMWE agreement includes certain *quid pro quos* which do not exist in the instant case. The Carrier adds that the IC-BMWE special agreement, and that overall Agreement itself, are products of negotiations between those parties, and the pay rates are different than those on the Wisconsin Central for a host of reasons. Therefore, the Carrier states, the pay rates on that property are not controlling or relevant to the instant dispute.

The Carrier emphasizes that pay on each separate railroad is a product of separate negotiations by clearly distinct parties, and this Board cannot be used as a vehicle for the Organization, without negotiations, to obtain what was obtained through negotiations on other properties. The Carrier asserts that were the Organization to prevail here, the Carrier could expect an immediate argument that the 3-way Dump Truck Operator's pay grade should also be elevated. The Carrier also notes that the Organization's reference to the Lake Superior & Ishpeming Railroad Company involves one very small Carrier, and is certainly insufficient to establish an industry standard.

The Carrier concludes that as the qualifications for the Three Way Dump Truck operator and those for the Vac Truck operator are the same, the classification and pay rate should be the same. That is what the Carrier did. For all of these reasons, the Carrier concludes, Pay Grade 4 is appropriate for this position, and the claim should be denied.

We have carefully reviewed the record in its entirety. The parties agree that the only issue before this Board is the proper classification, for pay purposes, of the Vac Truck operator position. Both parties recognize that the Board can make that determination only through consideration of what employees in comparable positions are paid. Although both parties make extensive arguments about the nature of the equipment itself and the skills necessary to operate it, the Board must note that the record includes very little factual support for those arguments.

The Carrier's evidence consists primarily of its determination, as set forth in its letter to the Organization establishing the position, of the general qualifications for the position, and the fact that they are identical to those for the operator of a Three-Way Dump Truck, a Grade 4 position. The general qualifications for a Grade 3 position the Organization asserts is comparable include certain training requirements not applicable to the instant position.

The problem with reliance upon these qualifications, however, is that they are, as set forth in the position bulletins themselves, "general qualifications." They do not establish, with any specificity, the actual skills utilized and responsibilities undertaken by the employees on a daily basis, nor does any other evidence provide the Board with that information. While similar qualifications are a relevant consideration, they do not, standing alone, establish that the "duties, responsibilities [and] characteristics" of the two positions are similar. Thus, there is no substantial basis for this Board to determine the proper placement of the position at issue by reference to the Pay Grade placement of operators of other machines.

The record does, however, include evidence concerning the pay rates for employees operating the same equipment. While the evidence is not extensive, the Carrier concedes the Organization's internal comparable, that Vac Truck operators on another Carrier property are paid at the higher rate. While the Carrier contends that this occurred by means of a special agreement and specific *quid pro quo*, these are assertions, unsupported by any record evidence. It is certainly true, as the Carrier asserts, that this rate was the product of negotiations, but the Board must assume, absent evidence to the contrary, that the purpose of salary negotiations is to determine the appropriate salary. The Carrier also does not dispute the Organization's contention that there exists an external comparable on at least one other railroad.

The Carrier has presented no evidence that Vac Truck operators on any railroad property are classified as it has classified the instant operators. Therefore, the weight of the comparability evidence must go to the Organization, and the claim will be sustained.

AWARD

Claim sustained.


JACALYN J. ZIMMERMAN
Neutral Member


D.L. MCPHERSON
Carrier Member


TIMOTHY KRKE
Organization Member

Dated this *9th* **day of** *December* **2009.**