

NATIONAL RAILROAD ADJUSTMENT BOARD
Third Division

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
ILLINOIS CENTRAL RAILROAD COMPANY

DISPUTE.—

"Request that Cleatis Byerley, section laborer, Kentucky Division, be paid the difference between section laborers' rate of 29½ cents per hour and waterworks repairman helpers' rate of 55 cents per hour for the time he was assigned to assist waterworks repairman William McCollum during the months of January, February, and March, 1935, a total of 328 hours, amounting to \$83.64, less 5% pay-roll deduction—\$79.46."

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

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon.

The parties have jointly certified the following statement of facts, and the Third Division so finds:

"Waterworks repairman McCollum is assigned to work in the territory between Gilbertsville and Mayfield, Kentucky (including Paducah Yards and Shops), and between Paducah, Kentucky, and East Cairo, Kentucky. He has no helper or assistant. Section Laborer Cleatis Byerley was required to work with and under the waterworks repairman's supervision on the following dates:

January 1935	February 1935	March 1935	January 1935	February 1935	March 1935
4.....	1.....	1.....	17.....	19.....	11.....
5.....	2.....	2.....	18.....	20.....	12.....
7.....	12.....	4.....	19.....	21.....	13.....
8.....	13.....	5.....	31.....	26.....	14.....
9.....	14.....	6.....		27.....	15.....
14.....	15.....	7.....		28.....	16.....
15.....	16.....	8.....			18.....
16.....	18.....	9.....			
			Totals—12 days..	14 days....	15 days.

Grand Total—41 days, 8 hours per day—328 hours.

"Cleatis Byerley was paid the section laborer's rate of pay on the dates shown above, and presented claim for an adjustment of 25.5¢ per hour for 328 hours, total \$83.64, less 5% payroll deduction—\$79.46, which represents the difference in section laborer's and waterworks repairman helper's rates of pay.

"The claim is based on Rule 51 of the schedule agreement, effective September 1, 1934, reading:

"*Composite Service.*—An employee working on more than one class of work four (4) hours or more on any day will be allowed the higher rate of pay for the entire day. When temporarily assigned by the proper officer to a lower rated position, his rate of pay will not be reduced."

There is in evidence an agreement between the parties, bearing effective date of September 1, 1934, and petitioner cites and relies upon Rule 51 in support of claim.

Petitioner contends that on the dates cited, Byerley was assigned to assist waterworks repairman in the performance of his work and that he engaged in such work as assisting in cutting and threading pipes, making repairs to penstocks, drinking fountains, toilets, water pumps, reseating valves, digging ditches or trenches to uncover pipe line needing repairs, etc., and that his service was virtually the same as that of the assigned waterworks repairman helper, which position was discontinued on or about January 1, 1935.

Carrier represents that, during the period of this claim, waterworks repairman McCollum had no helper, or laborer regularly assigned to work with him and, when laborer's work, such as excavating, back filling and handling heavy material, was necessary, McCollum was authorized to call on Section Foreman, Paducah Yard, for a laborer to do such work.

That, on some 41 days during January, February, and March, 1935, McCollum needed the service of a laborer and the Section Foreman sent section laborer Byerley to the waterworks repairman to do laborer's work.

While the petitioner contends section laborer Byerley performed work usually required of a waterworks repairman helper, such as cutting, threading and laying pipe, as well as other work usually done by waterworks repairmen and helpers, waterworks repairman McCollum states the work done by Byerley consisted mostly of digging for leaks and digging holes for water and steam lines; that he did assist some in cutting and threading pipe, but this did not consume over 10% of his time. Therefore, Rule 51 does not support claim.

Laborer Byerley did not assist in making repairs and had a waterworks repairman helper been required, the position would have been filled by an employee covered by the Sheet Metal Workers' Agreement.

Waterworks repairmen helpers are covered by agreement with the Sheet Metal Workers' International Association and Rule 59 reads, in part:

"HELPERS

"Employees regularly assigned as helpers to assist water service repairmen and apprentices. * * *

The Carrier does employ, on certain divisions, waterworks laborers, at rates equal to, or in excess of section laborer's rates, and while no waterworks laborer's rate has been established for the Kentucky Division, the Carrier offered to negotiate a rate.

The Third Division finds, on 41 days in January, February, and March, 1935, waterworks repairman McCollum called on Section Foreman, Paducah, for assistance and, as a result of this request, section laborer Byerley worked under the waterworks repairman on the days in question.

The conflicting and inadequate statements in the record as to the character of work performed by Byerley on the dates in question do not admit of classification of the work by the Third Division. Therefore, the case is remanded to the parties to jointly develop and classify the work performed and dispose of the case in accordance with the facts developed.

AWARD

Case is remanded for disposition in accordance with the above finding, without prejudice of right of either party to resubmit the dispute, if not adjusted.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: H. A. JOHNSON
Secretary

Dated at Chicago, Illinois, this 7th day of December, 1936.