

NATIONAL RAILROAD ADJUSTMENT BOARD
Third Division

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY
THE CHICAGO, ROCK ISLAND AND GULF RAILWAY COMPANY
(FRANK O. LOWDEN, JAMES E. GORMAN, JOSEPH B. FLEMING,
TRUSTEES)

STATEMENT OF CLAIM.—

"Claim of L. A. Kapfer, employed on coal chute at West Liberty, Iowa, that he be properly classified as coal chute foreman at the rate of \$112.60 per month and that he be paid the difference between the rate received, 35¢ per hour and that which he should have received—\$112.60 per month for time worked since June 1, 1934."

STATEMENT OF FACTS.—The coal chute at West Liberty is a mechanical chute, electrically operated. Prior to July 1, 1923, the carrier operated the coal chute, engaging L. A. Kapfer as coal chute foreman at \$112.60 per month. Effective July 1st, 1923, the carrier contracted the operation of the coal chute to one J. W. Reed. Contractor Reed continued L. A. Kapfer as operator of the chute, paying him on a tonnage basis—5¢ per ton, with a guarantee of \$125.00 per month and bonus of 3¢ per ton for tonnage in excess of 4,000 tons handled per month. On June 1, 1934, the carrier cancelled the contract with Mr. Reed, and resumed the operation of the coal chute with its own employees.

On or about that time the carrier issued certain instructions and posted bulletins relative to changes in the methods of handling the work and in respect to assignment of certain duties in connection with this coaling station to the section foreman at West Liberty resulting in the discontinuance of the position of coal chute foreman at West Liberty and the establishment of the position of coal chute laborer at that point at the rate of 35¢ per hour, to which the claimant L. A. Kapfer was assigned.

There is in evidence an agreement between the parties bearing effective date of November 1, 1927.

POSITION OF EMPLOYEES.—The employees contend that L. A. Kapfer has performed all of the service in connection with the operation of the coal chute at West Liberty since he was classified as laborer June 1, 1934, exactly the same as he did when classified as coal chute foreman with the exception that since June 1, 1934, he has submitted his reports to the station agent instead of to a division officer.

POSITION OF CARRIER.—The carrier contends that Mr. Kapfer in the position of coal chute laborer is not held responsible or accountable for the operation or maintenance of the coal chute, nor is he required to maintain records pertaining to its operation, and that the supervisory duties in connection therewith are assigned to and performed by the section foreman. Also, that it was not necessary for Mr. Kapfer to remain at West Liberty as a coal chute laborer as vacancies to other positions of coal chute foreman shortly after he was assigned to the position of coal chute laborer at West Liberty were available to him for bid, but that he apparently preferred to remain at West Liberty on a position of coal chute laborer and that under the accepted interpretation of Rules 4 and 6 of the agreement between the parties which relate respectively to reduction in force and rights of other than laborers Mr. Kapfer lost his seniority as a coal chute foreman when he failed to take a position of foreman and elected to remain as a coal chute laborer.

OPINION OF BOARD.—Positions of coal chute foremen are and have been included in successive agreements effective between the parties to and including the present agreement and cover the position as it existed at West Liberty, Iowa, prior to July 1, 1923, from which date until June 1, 1934, the operation of this coal chute was let to a contractor. The incumbent of the position of coal chute foreman (claimant in this case) continued as coal chute foreman for the contractor, retaining and accumulating seniority under the agreement with the carrier while thus engaged with the contractor.

The duties of coal chute foreman are variously described in the record to include: the spotting and unloading of cars of coal, the operation and care of the mechanical parts used to elevate coal to the storage pockets, maintenance of engine room in clean condition, handling of reports of cars of coal received and unloaded and coal delivered to engines, bearing the responsibility of having coal ready and the chute working for delivery to all engines, preparation of time slips, and certain other duties which may be assigned.

Following resumption of operation by the carrier of this coal chute on June 1, 1934, there was established the position of coal-chute laborer, coincident with which instructions were issued to the effect that the responsibility for the operation and maintenance of the chute would not be attached thereto, nor would any supervisory or clerical duties be performed by the incumbent of that position, such responsibilities, supervisory and clerical duties thereafter to be handled by the roadmaster and section foreman.

The incumbent of the position throughout the periods involved prior to, during, and following the period of operation by the contractor was and is the claimant, L. A. Kapfer. The parties are in essential agreement as to the facts relating to his service prior to June 1, 1934. Thereafter there is disagreement as to the extent to which he had been relieved of duties other than those of a coal chute laborer, and though the record is lacking in complete detail covering the entire period of service thereafter, it is the opinion of this Board that the abolishment of the position of coal chute foreman at West Liberty was not shown to have been accompanied by a discontinuance and reassignment to other employees of duties formerly attached thereto justifying the classification of the attendant position at that point thereafter as a coal chute laborer.

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 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 abolishment of the position of coal chute foreman at West Liberty was not shown to have been accompanied by a discontinuance and reassignment to other employees of duties formerly attached thereto justifying the classification of the attendant position at that point thereafter as a coal chute laborer.

AWARD

Claim that L. A. Kapfer employed on coal chute at West Liberty, Iowa, is sustained and he shall be paid the difference between the amount he had earned in service at the coal chute and the amount which he would have earned in such service at the established rate of \$112.60 per month since June 1, 1934, less the percentage deductions authorized by the so-called Chicago and Washington agreements.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: H. A. JOHNSON
Secretary

Dated at Chicago, Illinois this 28th day of June, 1937.