

NATIONAL RAILROAD ADJUSTMENT BOARD
Third Division

Arthur M. Millard, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
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 employes that the carrier violated current Agreement by discontinuing the position of water service foremen, which classification of employes is specifically set forth in the Agreement, at a rate of \$190.00 per month, and in assigning the work of this class of employes to assistant master carpenters, a newly created classification, at the rate of \$180.00 per month, a classification not governed by the Agreement, and that water service foremen in the service as such, on June 30, 1936, be reimbursed for the difference earned in a lower classification and that which they should have earned as water-service foremen."

EMPLOYEES' STATEMENT OF FACTS.—In their ex parte submission the employes stated the facts as follows:

"Rule 1, of Agreement between the Chicago, Rock Island and Pacific Railway Company and the Chicago, Rock Island and Gulf Railway Company, defining classes of employes coming within the scope, and to be governed by that Agreement, reads in part:

"GROUP 3. *Water service.*—Water Service employes shall be divided into the following classes:

"(a) Water Service Foremen.

"(b) Water Service Mechanics.

"(c) Water Service Mechanics' Helpers."

"Rule 2 defines the seniority districts for the several classes of employes. Group 3 thereof, applicable to Water Service Employes, reads:

"3. (a) Water Service Foremen.

"(b) Water Service Mechanics.

"(c) Water Service Mechanics' Helpers.

"By Superintendent's Division."

"The agreed Schedule rates of pay for Water Service Foremen is \$190.00 per month.

"On or about July 1, 1936, the Carrier discontinued the service of its Water Service Foremen, assigning their work to Assistant Master Carpenters, a newly created class of employes, receiving a rate of \$180.00 per month, a class not governed by the Schedule."

CARRIER'S STATEMENT OF FACTS.—The Carrier submits that—

"Effective August 1, 1936, supervisory and official positions of assistant master carpenter were established on various divisions at a rate of \$180.00 per month."

POSITION OF EMPLOYEES.—In support of this claim the Employes submit the following statement:

"The current Agreement between the Chicago, Rock Island and Pacific Railway Company, the Chicago, Rock Island and Gulf Railway Company, and the Brotherhood of Maintenance of Way Employes, governing all employes in the Maintenance of Way Department, was revised effective

duties as were formerly performed by water service foremen when such positions were in existence. This statement is not correct. When the position of water service foreman was in existence, the duties of the incumbents of such positions were confined strictly to water service work. They had no supervision over, nor did they perform any work in the bridge and building department except in certain isolated instances where the water service foreman carried the time of a few bridge and building carpenters at a large terminal or shop point in the absence of a B&B foreman.

"As stated above, assistant master carpenters perform no actual work. All water service foremen were required to and did actually perform work; in fact, several water service foremen had no mechanics under their supervision and the foremen actually performed any and all necessary work on their assigned territory.

"The present positions of assistant master carpenter, as outlined above, have the responsibility of directing the activities of not only the water service department but also the bridge and building department, and because of the duties and responsibilities incumbent upon them they are properly considered as and actually are officials of the carrier. The men holding these positions of assistant master carpenter retain and are continuing to accumulate seniority on their respective seniority rosters as outlined in rule 14 quoted above. They are considered and treated as are other officers of the carrier."

OPINION OF BOARD.—The claim in this dispute is based on the discontinuance by the Carrier of positions of Water Service Foremen, a classification of employees specifically set forth in Rule 1, Group 3, of the agreement between the parties, effective January 1, 1936, as coming within the scope of the agreement, and assigning the work of this class of employees to Assistant Master Carpenters, a newly created classification of employees not covered by the agreement.

The employees contend that the carrier violated the rules of the existing agreement by removing the work and positions of Water Service Foremen from the scope and operation of the agreement, and assigning the work, or the supervision of the work previously performed by the Water Service Foremen, to a newly created class of employees designated as Assistant Master Carpenters.

The Carrier submits that positions of Water Service Foremen were abolished and supervisory and official positions of Assistant Master Carpenters were established, and states that when the positions of water service foremen were in existence the duties of the incumbents were confined to strictly water service work. The Carrier further submits that the Water Service Foremen had no supervision over, nor did they perform any work in the bridge and building department except in certain isolated instances, and that such employees were required to and did actually perform work. In the changes made by the carrier it is stated that Assistant Master Carpenters perform no actual work except in an emergency, and that their work is generally supervisory and includes all phases of the work in the maintenance of way, bridge and building and water service departments; and submits that the scope rule of the maintenance of way schedule except supervisory forces above the rank of foreman; and quote Rule 14 of the schedule covering the retention of seniority rights by employees promoted to positions above the rank of foreman.

The Board submits that no question has arisen in this dispute as to the exception of supervisory positions as outlined in the scope rule of the agreement, at the same time it is the opinion of the Board that, inasmuch as the water service work continued to be performed, and that an agreement existed between the parties establishing positions of Water Service Foremen, such change as was made by the Carrier in abolishing the positions of Water Service Foremen and assigning such work to a newly created classification of employees known as Assistant Master Carpenters, should have followed the orderly process of negotiation between the parties to the agreement, and that in making the changes without such negotiation the Carrier violated the terms of the existing agreement between the parties.

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 employes involved in this dispute are respectively carrier and employes 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 terms of the existing agreement between the parties.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: **H. A. JOHNSON**
Secretary

Dated at Chicago, Illinois, this 3rd day of September, 1937.

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**INTERPRETATION No. 1 TO AWARD No. 490,
DOCKET No. MW-513**

NAME OF ORGANIZATION: Brotherhood of Maintenance of Way
Employees

NAME OF CARRIER: 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)**

Upon application of the representative of the employees involved in the above award, that this Division interpret the same in the light of the dispute between the parties as to its meaning, as provided for in Sec. 3, First (m) of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

In its Award in connection with the case at issue, the Board sustained the claim of the employees and held that the Carrier violated the terms of the existing agreement between the parties.

In rendering this decision and award in connection with the subject at issue, the Board submits that the action of the Carrier in abolishing or discontinuing the positions of Water Service Foreman, a classification of employees specifically set forth in the Agreement between the parties, and assigning the work formerly performed by this class of employees to Assistant Master Carpenters, employees occupying newly created positions or assignments, or to a newly created classification of employees not covered or governed by the Maintenance of Way Agreement, constituted a violation of the agreement between the parties which was clearly indicated as specified in the Award; and which, so long as the work specified and the violation of the Agreement in the manner indicated continued to exist, could not be adjusted or rectified by the simple process of payment by the Carrier of the difference in rates between the two assignments or classifications.

In the opinion of the Board the violation of the Agreement between the parties, as outlined in the claim and according to the findings of the Board, could only be properly adjusted by removing and rectifying those conditions which constituted a violation of the agreement in the manner specified in the Opinion of the Board contained in the Award.

Under these conditions the Board rules that the meaning and intent and the proper interpretation of the Award is, that so long as the work of Water Service Foremen and the violation of the Agreement between the parties on which the claim was based and the

Award was rendered, continued or continues to exist without the application of that orderly process of negotiation referred to in the Award, the employes were and are entitled to the restoration of their positions and payment of the difference between what they earned or earn in any other position or classification and that which they would have earned as Water Service Foremen.

Referee Arthur M. Millard, who sat with the Division, as a member, when Award No. 490 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 22nd day of July, 1938.