

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Royal A. Stone, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
THE CHICAGO, BURLINGTON & QUINCY RAILROAD
COMPANY**

STATEMENT OF CLAIM: "Claim of G. E. McNulty, bridge and building employe, Chicago Division:

"First: that the Carrier violated Rule 52 (g) of the current agreement by classifying and paying G. E. McNulty as bridge and building laborer for services performed on various dates from November 16th to December 23rd, 1938.

"Second: that G. E. McNulty shall be paid the difference between what he earned at 43¢ per hour under the classification of bridge and building laborer, and what he should have received at 55¢ per hour under the classification of a bridge and building helper for 8 hours per day on the following dates:

November 16th, 21st, 22nd, 23rd and 25th, 1938,
December 5th, 13th, 14th, 15th, 16th, 17th, 19th, 20th, 21st, 22nd
and 23rd, 1938."

EMPLOYEES' STATEMENT OF FACTS: "Rules 52 (f) and 52 (g) of agreement in effect read:

'(f) An employe assigned to assist the respective mechanics outlined in the foregoing paragraphs of this rule will be classed as a Helper. 'Helpers will be required to provide only such mechanics' tools as may be necessary for them to learn the trade.

'(g) An employe in the Bridge and Building Department regularly assigned to do work commonly recognized as laborers' work, such as excavating, back filling or similar pick-and-shovel work, loading and unloading materials will be classed as a Bridge and Building Laborer.'

During the periods in question, G. E. McNulty rendered service as follows:

- Nov. 16--Helping mechanic repair coal chute and repairing doors in Western Ave. roundhouse.
- Nov. 21--Helping mechanic rebuild box over pipe at water tank at Western Ave. roundhouse and repairing roundhouse door.
- Nov. 22--Helping 3 mechanics clean up around Robey St. tower and hauling back unused material from Robey St. to Western Ave. roundhouse.
- Nov. 23--Helping mechanic repair and paint doors in Western Ave. roundhouse.

"The provisions of the above rule were strictly complied with, and there is no dispute on this point.

"Rule 56 reads:

'An employe temporarily assigned by proper authority to a position paying a higher rate than the position to which he is regularly assigned for four (4) hours or more in one day will be allowed the higher rate for the entire day.'

"In an endeavor to make a fair settlement of this claim in compliance with the above quoted rules, we accepted Mr. McNulty's own statement of the classes of work he performed, and offered to pay him the helper's rate for November 16th, 21st, 23rd, and 25th—as practically all work performed on these four dates appeared to justify payment of B. & B. Helper's rate under Rule 56. However, payment of B. & B. laborer's rate as made on November 22nd is proper as, according to Mr. McNulty's own statement, he assisted the mechanic less than four hours on that date and was, therefore, not entitled to the higher or helper's rate of pay under Rule 56. On this date all or practically all the work performed by Mr. McNulty consisted of cleaning up slate after it was taken off the roof, and taking unused lumber to Western Avenue roundhouse. On December 5th, according to Mr. McNulty's statement, he worked 8 hours helping three mechanics raise low spots on Lawndale Avenue bridge, and we offered to allow the B. & B. Helper's rate for that day.

"On December 20th and 21st Mr. McNulty worked 3½ hours each day changing shims on track No. 1, 42nd Avenue bridge, and although on each of these dates he was assigned to the higher or helper's rated position for less than the four hours provided by Rule 56, we offered—in order to dispose of the claim, to pay him the helper's rate for these two days. However, under Rule 56, Mr. McNulty is not entitled to the helper's rate, and as he declined to accept the higher rate when offered, it is the position of the Management that payment for these two days should now be made in conformity with Rule 56; that is, the laborer's rate.

"On all the other days for which claim for the helper's rate is requested, the work performed by Mr. McNulty, such as cleaning depot ceiling and walls, is 'work commonly recognized as laborer's work' under Rule 52 (g), and is ordinarily performed by janitors and other unskilled employes performing menial work. Furthermore, cleaning rail troughs is nothing more than laborer's work and is generally done by section laborers, who as a matter of fact, receive a lower rate of pay than that of B. & B. laborers. On all of these dates there were no mechanics assigned to the cleaning of the ceiling and walls and rail troughs, and consequently Mr. McNulty had no opportunity to assist a mechanic and, therefore, there is no justification for the helper's rate.

"In 1939 the Committee presented a claim in behalf of B. & B. laborer Gus Hoppenstedt, for eleven days' pay at helper's rate, including seven days cleaning ceiling and walls and rail troughs on December 14th, 15th, 16th, 17th, 19th, 22nd, and 23rd—the same dates and places where Mr. McNulty performed exactly the same work. Compromise settlement was reached in the Hoppenstedt claim.

"Under Rule 56, the higher or helper's rate need not be paid unless a laborer is assigned to a higher rated position by proper authority and works four hours or more in the higher paid position.

"It is the position of the Management that only on November 16th, 21st, 23rd, 25th and December 5th (five days) was McNulty entitled to the helper's rate of pay and that on the other eleven days he was entitled only, under Rule 56, to the laborer's rate of pay."

OPINION OF BOARD: This claim will be allowed, that is Mr. McNulty will be paid at the helper's rather than the laborer's rate, for the work done

by him on the 16th, 21st, 22nd, 23rd, and 25th days of November, and the 5th, 13th, 14th, 15th, 16th, 17th, and 19th days of December, 1938. This under Rule 56, reading thus:

"An employe temporarily assigned by proper authority to a position paying a higher rate than the position to which he is regularly assigned for four (4) hours or more in one day will be allowed the higher rate for the entire day. Except in reduction of force, the rate of pay of an employe will not be reduced when temporarily assigned by proper authority to a lower rated position."

It will be denied for the work from December 20th to December 23d, both dates inclusive.

Implicit in the allowance of the claim for the days stated is a holding that under the circumstances of this case and the applicable rules, the cleaning of ceiling and walls in the Western Avenue Depot and Yardmaster's office should be considered as work of a helper rather than common laborer. So far as the claim is denied, it is based upon the opinion, in part, that cleaning rail troughs is, under the applicable rules and the facts, properly considered ordinary labor.

McNulty was regularly assigned during the determinative period as a laborer. But Rule 52 (g) does not help his claim. It is in this language:

"An employe in the Bridge and Building Department regularly assigned to do work commonly recognized as laborer's work, such as excavating, back filling or similar pick-and-shovel work, loading and unloading materials will be classed as a Bridge and Building Laborer."

For the claim, argument is that the clause "such as excavating, back filling or similar pick-and-shovel work, loading and unloading materials" is an **exclusive** enumeration, intending that whatever work is done, outside the precise sorts enumerated, is not that of a B. & B. laborer under the rules. That view is disallowed. The enumeration is intended to be illustrative rather than exclusive. The phrase "such as" is synonymous with "for example." In this respect the rule cannot properly be otherwise construed. It was so decided, and we think correctly, in Award No. 1251.

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 employe involved in this dispute are respectively carrier and employe 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 there has been a violation of Rule in assigning the claimant to helper's work, while paying him at the laborers' rate, for the days as to which the claim is allowed.

AWARD

The claim sustained for the days stated.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 19th day of May, 1941.