

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Referee Bruce Blake

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

**CHICAGO, BURLINGTON & QUINCY RAILROAD
COMPANY**

STATEMENT OF CLAIM: "Claim of Bridge and Building Employee, H. S. Cooper, Hannibal Division, based upon the application of Schedule Rule 52, that he be paid Bridge and Building Helper's rate of pay of 55 cents per hour in lieu of Bridge and Building Laborer's rate of pay, i. e. 43 cents per hour, for services performed on August 1st, 2nd, 3rd, 5th, 6th, 7th, 8th, 9th, 10th, 12th, 13th, 14th, 15th, 16th, 17th and 19th, 1940."

EMPLOYES' STATEMENT OF FACTS: "During the period from August 1 to August 19, 1940, Mr. H. S. Cooper was employed in Bridge & Building Gang No. 3, under the supervision of Foreman W. L. Roberts. The work performed by H. S. Cooper on the dates enumerated in the Statement of Claim was that of operating an air hammer machine and he received for this class of work 43 cents an hour. The rate of 43 cents is the agreement rate for Bridge & Building laborers."

"The class of work performed by H. S. Cooper was that of a Bridge & Building helper and the rate provided for in the agreement for this classification is 55 cents per hour. This resulted in Cooper's being underpaid 12 cents per hour for eight hours on each of the 16 days in question. The total amount due Cooper, therefore, is \$15.36."

POSITION OF EMPLOYES: "Rule 52, Sections (f) and (g) of the current agreement between the Brotherhood and the Carrier read as follows:

'(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 mechanic's 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 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.'

"The Employees contend that H. S. Cooper was assigned to operate a mechanical device on the dates here involved and the work performed by him came within the provision of Rule 52 (f), and for this reason, we contend, the helper's rate of pay should have been paid him.

"Section (g) of Rule 52 provides and classifies work to be performed by Bridge & Building laborers. The work performed by Cooper on the dates involved in this claim was that of a Bridge & Building helper and not work

augment these tools with compressed air and a specially built demolition hammer, which lightens the work of the men to a great extent, but in no sense does it increase the responsibilities or demand greater skill of the employes who are performing the service. At no time was any individual assigned to exclusive operation of the demolition hammer—the entire gang was working as a unit, as provided in Rule 52 (h), rotating throughout the day, some using demolition hammers, some using wedges and mauls, while others were using bars.

“There were laborers senior to Cooper in the seniority district, and he was classified and assigned according to his seniority rank and qualifications. H. S. Cooper was properly classified according to his seniority.”

POSITION OF CARRIER: “The work in question required no skill whatever and can only be classified as laborers’ work. Therefore, under the provisions of Rules 52 (g) and 52 (h) payment of laborers’ rate was proper.”

OPINION OF BOARD: This dispute involves the construction of certain subsections of Rule 52 of the agreement between the Carrier and the Brotherhood of Maintenance of Way Employees, effective June 1st, 1938. The pertinent provisions are as follows:

RULE 52

“(a) An employe skilled in and assigned to the construction, repair or maintenance of buildings, bridges or other structures, in the Bridge and Building Department, will be classed as a Bridge and Building Mechanic.

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“(f) An employe assigned to assist the respective mechanics outlined in the foregoing paragraphs of this rule will be classed as 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 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.

“(h) Bridge and Building Gangs will be composed of foremen, mechanics, helpers and laborers. The number of positions of mechanics, helpers and laborers assigned in each gang will be in proportion to the nature of the work to be done in the ensuing month, but in no case, on an Operating Division, will the number of helpers and laborers exceed the number of mechanics. . . .

It is recognized that work in Bridge and Building . . . Gangs is of such nature that employes must work more or less as a unit and when the ratio herein provided is adhered to, it will not be construed as a violation of Rule 56 for lower rated employes to assist and work with higher rated employes on the work to be performed.”

Rule 56 provides:

“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. . . .”

During the period covered in this dispute the claimant, Cooper, was one of four laborers in Bridge and Building Gang No. 3, which was composed also of four mechanics and one Helper.

On the days in question, August 1, 2, 3, 5, 6, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17 and 19, 1940, the gang was engaged in removing the upper five feet of both masonry abutments of Bridge 134.17. This work was preliminary to

replacing the masonry with steel and concrete. In removing the masonry two compressed air hammers were used, one requiring two men to operate. It is established with reasonable certainty that Cooper was engaged in operating one or the other of these hammers for four hours or more upon the days in question. Treating Cooper as a Bridge and Building Laborer, the Carrier paid him for the days in question at the rate of 43 cents an hour. The petitioner contends that, under Rule 56, he should have been paid the Helper's rate of 55 cents per hour.

The Carrier contends: first, that the work performed was common labor; and second, that the entire gang was engaged as a unit in the operation, and that Rule 56 is not applicable in the light of the provisions of the last paragraph of Rule 52 (h), above quoted. The same contention was decided adversely to the Carrier with reference to this same rule in the disputes involved in Awards 1251 and 1430.

So the issue is resolved to the question of whether Cooper, in operating an air hammer on the days specified, was engaged in common labor in contemplation of Rule 52 (g), above quoted. The Board is of the opinion that he was not. Such an operation does not come within the express or implied scope of Rule 52 (g). Furthermore, the removal of the masonry abutments constituted an integral part of the "repair or maintenance" of the bridge contemplated in Rule 52 (a) defining Bridge and Building Mechanic. Cooper, therefore, in operating the air hammer on the days in question came within the scope of Rule 52 (f) defining Helper.

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 the agreement in assigning claimant to helper's work, while paying him at the laborer's rate, for the days in question.

AWARD

The claim is 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 November, 1941.