

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

John W. Yeager, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

**CHICAGO, BURLINGTON & QUINCY RAILROAD
COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that Bridge and Building Laborer F. R. Adams, system gang employe, be paid the difference between what he received at bridge and building laborer's rate of pay of 43 cents per hour, and what he should have received at bridge and building helper's rate of pay of 57 cents per hour on the following dates: March 27 to 30; April 1, 2, 4, 5, 19, 23, 24, 25 and 26; May 4, 14, 15, 16, 17, 20, 21, 23, 24 and 31; June 8, 10, 12, 13, 14 and 15, 1940.

EMPLOYES' STATEMENT OF FACTS: F. R. Adams was employed as a bridge and building laborer in System Gang No. 4, under Foreman C. H. Anderson, from March 27 to June 15, 1940. The classification of employes in System Gang No. 4 during the period in question was as follows:

March 1940

One foreman, one assistant foreman, 10 mechanics, 5 helpers and 5 laborers.

April 1940

One foreman, one assistant foreman, 9 mechanics, 2 helpers, and 3 laborers.

May 1940

One foreman, one assistant foreman, 9 mechanics, 2 helpers, and 3 laborers.

June 1940

One foreman, one assistant foreman, 9 mechanics, 2 helpers, and 3 laborers.

System Gang No. 4 was engaged in making extensive repairs to the upper deck of the "Hannibal" Bridge located at Kansas City, Missouri. This bridge is a double-deck bridge. The lower deck is used for railroad service and contains two tracks. The upper deck is used for highway traffic. Major changes were made to the upper deck, requiring removal of the paving blocks, reinforcement planks, and changing of a portion of the steel beams, to meet the necessary requirements in the widening of the bridge so as to avoid delay or congestion of traffic using same.

During the time involved in this claim F. R. Adams was employed to perform the following duties:

made by them to determine the time that the claimant did work as a helper, so that the claimant may be paid at the helper's rate of pay for any work performed by him as a helper."

In applying the provisions of Award No. 1251, a conference was held on January 6, 1941, at which it was agreed to allow the difference between the laborer rate as paid and helper rate as claimed except on six dates when it was known beyond doubt that only laborer's work was performed. This manner of settlement was resorted to because it was not possible in that case to determine the exact character of work performed and the time consumed at each function by claimant on the other dates named in that claim.

However, it is possible in the instant case to determine exactly what character of work the claimant performed. The organization was invited to participate in joint check to verify such determination. The invitation was refused. The carrier has therefore conducted its investigation independently and the evidence thereof made a part of this case shows definitely that the claimant laborer was not assigned to a position paying a higher rate than the position to which he was regularly assigned. Therefore, the claim should be denied.

OPINION OF BOARD: The claim here is by the System Committee of the Brotherhood of Maintenance of Way Employes and it charges that the Chicago, Burlington and Quincy Railroad Company, the Carrier, required F. R. Adams, a bridge and building laborer, to perform the duties of bridge and building helper on 29 days on and between March 27, 1940 and June 15, 1940, and for those days it paid him at the rate of 43 cents per hour, the laborer's rate, instead of 57 cents per hour, the helper's rate, in violation of Rule 56 and of their current rate of pay for helpers.

The interpretative principles involved in this dispute have been fully settled in former awards of this Division, recent ones being Awards 1251, 1430, 1601 and 1665, and for the purpose of this opinion they are accepted and adopted as controlling.

Rule 56 is as follows:

"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."

In the light of former awards we have left here for consideration, (1) the question of whether or not Adams was assigned to work as helper, (2) if so, whether or not he worked four hours or more on any day or days as helper, (3) again if so, on how many days, and (4) whether or not the showings on these questions here are sufficient upon which to base findings of fact.

These questions must be determined by days, and if they may be determined at all, for the most part from the respective showings by days in the file.

From these showings it appears that on various days Adams was assigned as helper for more than four hours per day.

From the record it appears doubtful if a joint check would, and almost conclusive that it would not, disclose any more or further accurate information as to the amount of time Adams worked as helper. Adams has furnished his own check, and the Carrier has furnished a check of the records maintained by the Foreman. Therefore, while these showings are for the most part in conflict an attempt has been made to reconcile them in their own light and that of the whole record.

In this light the conclusion is reached that the claim should be sustained as to the dates, March 27, 28, 29 and 30, April 1, 4, 5, 19, 23, 24, 25 and 26, May 14, 15, 16, 17, 20, 21, 23 and 24, June 12, 13, 14 and 15, and that it should be denied as to April 2, May 4 and 31, and June 8 and 10.

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 the claim should be sustained in part and denied in part.

AWARD

The claim is sustained as to the dates, March 27, 28, 29 and 30, April 1, 4, 5, 19, 23, 24, 25 and 26, May 14, 15, 16, 17, 20, 21, 23 and 24, June 12, 13, 14 and 15, and it is denied as to April 2, May 4 and 31, and June 8 and 10, with the right of F. R. Adams to be compensated for the difference between 43 cents per hour, the laborer's rate of pay, and 57 cents per hour, the helper's rate, for the days as to which the claim has been sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 28th day of May, 1942.