

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

**THE CHICAGO, ROCK ISLAND & PACIFIC
RAILWAY CO.**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that Messrs. C. H. Haney, Ben Boushier, Casildo Plancarte, Thomas Balderas, G. W. Roach, G. W. Barnhart, Silvester Ochoa, Pedro Quiroz, and G. L. Roach, section men, Armourdale, Kansas, be paid the difference between section men's rate of 40 cents per hour and B. & B. helper's rate of 59 cents per hour for 11 hours' work, two of which are to be paid for at the rate of time and one-half, on April 16, 1940.

EMPLOYEES' STATEMENT OF FACTS: On the morning of April 16, 1940, section men employed in the gang of Section Foreman F. A. Roberts were assigned by their foreman to assist B. & B. mechanics in making repairs to a turntable at Armourdale, Kansas.

The work to which they were assigned consisted of jacking up the turntable, lowering it, removing the old deck and putting on a new one, and other miscellaneous work necessary to place the table in operation.

These employees, on April 16, were engaged in performing work customarily performed by B. & B. employees.

Claimants received section men's rate of pay while performing the work of B. & B. helpers.

POSITION OF EMPLOYEES: There is an agreement in effect between the parties, bearing effective date of May 1, 1938, which agreement is, by reference, made a part of this case. Rule 37 thereof reads as follows:

"COMPOSITE SERVICE. An employe working on more than one class of work on any day, where there is a difference in the rate of pay, will, if employed more than one-half day on the higher class of work, be paid the higher rate.

"When properly assigned by their superior to a lower rated position, temporarily, their rate of pay will not be reduced.

"Nothing in this will permit the regular assignment of employes to higher rated work for a half day or less to avoid payment of the higher rate."

The classification of work to which the employees involved in this claim were assigned was that of B. & B. helpers. The service of mechanics was required and the men in this claim performed the work of helpers assisting mechanics.

The Carrier does not deny that assisting the B. & B. mechanics to raise and lower the turntable with jacks is B. & B. helpers' work and is willing to admit that assisting B. & B. men to clean oil and grease from turntable center base likewise was B. & B. helpers' work in the instant case. However, it will readily be noted from the statements of Mr. Caldwell and the Track Supervisor that the total amount of time devoted by two sectionmen to work we here concede was B. & B. helpers' work is less than three hours and therefore Rule 37 hereinbefore quoted, upon which the employees rely, does not support their claim. That rule provides an employee:

" . . . will, if employed more than one-half day on the higher class of work, be paid the higher rate. . . ."

Three hours or less is not more than one-half of an eight-hour day and therefore under the provisions of Rule 37, the claim cannot be sustained.

The Carrier holds that the balance of the work performed by the sectionmen in the handling of rail and ties incident to the track work on the turntable structure is sectionmen's work and work heretofore performed by sectionmen. Bridge and Building helpers are employees assigned to perform work generally recognized as helper's work and assisting mechanics in the performance of their work and on basis of the employees' contention that the nine claimants in this case should be paid the B. & B. helpers rate they are really saying that 9 B. & B. helpers were added to Foreman Stoner's B. & B. gang to assist them in the performance of B. & B. work which is not supported by the evidence of record.

The Carrier respectfully requests your Board to deny the instant claim.

OPINION OF BOARD: The question here presented is whether section men used in making repairs on a turntable are entitled to the rate of pay prescribed for bridge and building helpers.

The record discloses that a bridge and building foreman and a gang of four B. & B. mechanics and four B. & B. helpers, together with two section foremen and nine section men were utilized in making repairs to the turntable. The section men claim they are entitled to the rate of pay provided for B. & B. helpers under Rule 37 pertaining to composite service.

The section men were used to carry the old ties and rails off the turntable and to carry the new ones to it. The rails were spiked by the section men. Two section men were used for approximately forty minutes in assisting B. & B. men in jacking up the turntable and for approximately sixty minutes in jacking it down. Two men were also used to assist B. & B. men in cleaning oil and grease from the turntable center base for approximately one hour.

That a turntable is a structure within the meaning of Rule 1 of the Agreement cannot be seriously questioned. The maintenance of a turntable is work belonging to B. & B. employees. The Carrier argues that the replacing of ties and rails on a turntable is the regular and ordinary work of a section man. Carrier admits that the jacking of the turntable and the cleaning of oil and grease from its center base is B. & B. work but insists that as that work took less than one-half day, it is not within the scope of the composite service rule.

The position assumed by the Carrier that the replacement of old rails and ties with new ones on a turntable is the work of section men is untenable. It may be conceded that such work is very similar to the ordinary work of section men but this is not a controlling factor in view of the Agreement made. A similar structure without rails or ties would hardly be defined as a railroad turntable. It was clearly the intention of the contracting parties in drafting Rule 1 to assign all maintenance work on all structures, including turntables, to B. & B. men. The work of replacing ties and rails was not re-

served to section men either specifically or inferentially and, consequently, it must be deemed B. & B. work. The carrier points out that the section men were working under a track supervisor and two section foremen as evidence that the work was that of section men. This is a circumstance in the Carrier's favor but it is far from being a conclusive one. The facts adduced overcome any presumption that may exist because of the presence of section foremen and a track supervisor.

The Carrier points out also that the section men performed work in cleaning the premises occupied by the radial tracks extending from the turntable. For the purposes of this case, it will be conceded that this was work properly assigned to section men; the record, however, is devoid of proof of the time required to do the work. The evidence of claimant that the B. & B. helper's work performed by the section men exceeded one-half day, therefore, stands unrefuted. This brings the claim within the scope of the composite service rule and entitles the section men to the higher rate of pay of a B. & B. 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 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 replacement of ties and rails on a turntable is work assigned by the agreement to bridge and building employes; the section men involved in the present case having performed such work for more than one-half day, they are entitled to the higher pay of a B. & B. helper in accordance with the composite service rule.

AWARD

The claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 15th day of October, 1943.