Award No. 2655
Docket No. MW-2703

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Curtis G. Shake, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

MINNEAPOLIS, ST. PAUL & SAULT STE. MARIE RAILWAY COMPANY

(G. W. Webster and Joseph Chapman, Trustees)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood:

(a) That the Carrier incorrectly paid members of the section crew at Superior, Wisconsin while required and assigned to perform work of carpenter helpers on September 18, 1942; and

(b) That the section crew at Superior be paid the difference between what they received at sectionmen's rate and what they were entitled to receive, under Rule 26 of the current agreement, at carpenter helper's rate.

EMPLOYES' STATEMENT OF FACTS: On September 18, 1942, following the completion of the regular work day, the following section men, regularly employed on Sections 2 and 3 at Superior, Wisconsin, were called upon and instructed to proceed to the Bridge & Building Supply Yard at Superior to load B. & B. material consisting of pilings, bridge stringers, caps, bridge ties, etc., working on that assignment from 6:00 P. M. until 12:00 midnight:

Steve Bednarcik
Emil Nelson
Elmer Ulvi
Oscar Koho
J. E. Peterman
John Salay
Peter Kubalak
Philias Broussaue
Joseph Sniadak

The agreement in effect between the Carrier and the Brotherhood is by reference made a part of this Statement of Facts.

POSITION OF EMPLOYES: Handling of bridge building material, including bridge timbers, is work coming under the jurisdiction of the Bridge & Building Department and is work to which B. & B. Department employes are entitled. However, in an emergency such as in the instant case, any group of employes on the railway may be called upon in performing services or work properly belonging to another group or department. In such instances, employes from one department or sub-department performing services prop-

The regular B. & B. crew was assigned to lower rated work (loading this material) without reduction in pay which is the penalty we were obligated to pay under Rule 26.

It has been the practice in the past to require sectionmen to load and unload B. & B. material at sectionmen's rate of pay which is the same as paid B. & B. laborers, and this practice, until this dispute, remained unquestioned by the Committee. There is no agreement which restricts the Carrier in this respect but on the contrary insofar as carpenters or mechanics and their helpers are concerned Rules 45 (c) and 45 (i) define work they will perform to qualify and obtain wages as such and the sole question here involved is whether the section crew was engaged in the work of a common laborer. Your Board has sustained some claims but in all of these cases the laborers were actually performing mechanical work such as welding, construction and repairing. In Award 1430 the claim of the employes was denied in part on certain dates when common laborer's work was done.

Rule 45 of the Maintenance of Way Schedule covers grade classifications. It in no way defines what work shall be done by certain employes but simply states what grade or classification an employe shall be placed in when certain work is done. There is nothing in this rule to the effect that common labor work would not continue to be graded and classified as common labor work. Simply because Paragraph (j) is to the effect that common laborers may be employed as required to do excavating or back filling and similar miscellaneous pick and shovel work does not preclude the employment of laborers for other common labor work in accordance with the past practice.

Finally the Carrier contends that:

1. Work commonly recognized as laborer's work was performed and not mechanic's work.
2. No higher rate was involved for the work performed and Rule 26 has no application.
3. Sectionmen did not assist mechanics or helpers in the performance of mechanical work and the provisions of Rule 45 (i) has no application.

The rules and practices do not support the employes and the Carrier respectfully requests that the claim be denied.

OPINION OF BOARD: During an emergency, the carrier's regular section crew at Superior, Wisconsin, was called out to assist the bridge and building crew at that point in loading timber and other repair material to be sent to various points where washouts had occurred. The members of said section crew were compensated for the six-hour period involved at their regular overtime rates. They contend that they were entitled to the pay of carpenters' helpers, and the claim is for the difference.

Bridge and building carpenters and mechanics, helpers and laborers are respectively defined in Rule 45 (c), (i) and (j) of the effective Agreement of August 15, 1940, as follows:

> "(c) An employe assigned to construction, repair, maintenance or dismantling of buildings, bridges or other structures (except the iron or steel work), including the building of concrete forms, erecting false work, etc., or who is assigned to miscellaneous mechanic's work of this nature, shall constitute a bridge and building carpenter and/or mechanic."
>
> "(i) Employes assigned to assist the respective mechanics in paragraphs (a) to (h) inclusive, shall constitute helpers."
>
> "(j) Laborers may be employed as required to do excavating or back filling and similar miscellaneous pick and shovel work."

The claimants assert that inasmuch as they did not do any excavating or back filling or similar miscellaneous pick and shovel work, within the contemplation of Rule 45 (j), they come within the classification of helpers, under (i), and are entitled to be compensated as such, by virtue of the first paragraph of Rule 26, which provides:

> "An employe working on more than one (1) class of work coming within the scope of this agreement four (4) hours or more on any day will be allowed the higher rate of pay for the entire day. When temporarily assigned by the proper officer to a lower rated position his rate of pay will not be reduced."

In other words, the claimants say that helpers are the lowest paid classification in the bridge and building department, excepting only laborers who "do excavating or back filling and similar miscellaneous pick and shovel work." The carrier urges, on the other hand, that the claimants did not assist in the performance of any carpentering or mechanical work, as specifically described in Rule 45 (c), and that, as a consequence, they could only be classified as laborers.

We think the answer to the confronting problem is to be found in the clear and unambiguous provisions of the Agreement. The parties have, by very narrow and definite terms, limited and restricted laborers in the bridge and building department to those who "do excavating or back filling or similar miscellaneous pick and shovel work." We cannot, by construction or interpretation, expand that classification to include those engaged in loading bridge building materials onto cars. Such work could not, by the wildest stretch of the imagination, be considered excavating or back filling or pick and shovel work.

Awards 1251 and 1430, relied upon by the carrier, lend no support to its view of the case. The rule involved in those awards defined laborers in much broader language than does Rule 45 (j) here before us. In Awards 1251 and 1430 the rule reads:

> "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."

It will be noted that the basic definition of a laborer in the rule quoted is "work commonly recognized as laborer's work," and that "loading and unloading materials" is within the illustrative part of the rule; while in the Rule before us the basic words are "excavating and back filling," and "similar miscellaneous pick and shovel work" are the illustrative words. Awards 1251 and 1430 are clearly correct interpretations of the rule there involved, but they are of no help in the instant case. There is a well-recognized rule for the construction of written instruments that words of general import are limited by words of restricted import immediately following.

No significance can be attached to the circumstance that the stipulated pay for sectionmen and laborers in the bridge and building department is the same. Different seniority districts are involved and this requires that the classification provisions of the Agreement be strictly complied with.

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 Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 10th day of August, 1944.