

Award No. 4553
Docket No. MW-4531

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY
MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS

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

(1) That the Carrier violated the Agreement by not compensating Section Laborer Roy Grady and other Section Laborers at the Water Service Helper's rate of pay while they were working under the supervision of the Water Service Foreman on February 2 and 4, 1948, at Smithville, Texas.

(2) That Claimants Roy Grady and other Section Laborers be reimbursed for the difference in pay received at Section Laborer's rate, and what they should have received at Water Service Helper's rate, for services rendered on the date specified in part 1 of this claim.

EMPLOYES' STATEMENT OF FACTS: On February 2 and again on February 4, 1948 members of Section Crew 422, Smithville, Texas were assigned to assist the Water Service forces in the laying of a new water pipe at Smithville, Texas.

These section laborers dug the necessary trench and back filled after the water service employees had laid this water pipe.

The section laborers involved had the extent of their service rendered in the performance of the work referred to are as follows:

NAME	Feb. 2, 1948	Feb. 4, 1948	Total
George Hollis	4 hours	4 hours	8 hours
Roy Grady	4 hours	4 hours	8 hours
Emil Ermist	4 hours	8 hours	12 hours
Samuel L. Owens	4 hours	4 hours	8 hours
Noah Harrison	4 hours	8 hours	12 hours
Steve Hancock	4 hours	4 hours	8 hours
A. C. Croney	4 hours	4 hours	8 hours
Lee Van Harris	4 hours	0	4 hours
J. D. Hordman	4 hours	4 hours	8 hours

For the above listed services these section laborers were paid at their laborer's rate of pay.

These above named claimants are members of Section Crew No 422, Smithville, Texas. They customarily work under the supervision of Section Foremen Jim Canada.

Except as expressly admitted herein, the Carrier denies each and every, all and singular, the allegations of Petitioner's claim, original submission and any and all subsequent pleadings.

(Exhibits not reproduced.)

OPINION OF BOARD: The System Committee of the Brotherhood makes this claim in behalf of nine section laborers, members of Section Crew 422 located at Smithville, Texas. It contends these men should have been paid at Water Service Helper's rate of pay for the hours of service performed on February 2 and February 4, 1948, when they were assigned to assist the Water Service forces in laying a new water pipe at Smithville, instead of Section Laborer's rate, at which rate they were actually paid, and asks that they be paid the difference.

Carrier contends that under the Railway Labor Act this division is without jurisdiction to determine this dispute. As to this contention we find it to be without merit. Here recovery is sought under Article 14, Rule 1 of the Brotherhood's Agreement. This agreement is properly before us as the employees covered thereby are within the jurisdiction of this division. Rules of the Carrier's Agreement with the Sheet Metal Workers International Association, as they apply to Water and Plumbing employees, are here used not for the purpose of determining the rights of any Water Service employees thereunder, of which this Division does not have jurisdiction, but is evidence of the classification of the work here performed by these employees and the rate which Carrier has contracted to pay for the performance thereof, for which Claimants here seek recovery under the rules of their own Agreement. For similar holdings of this Division see Awards 674, 1544, 1598, 2169, 3489 and 4528.

Article 14, rule 1 of the Agreement provides:

"An employe working on more than one class of work on any day will be allowed the rate applicable to the character of work preponderating for the day, except that when temporarily assigned by the proper officer to lower rated positions, when such assignment is not brought about by a reduction of force or request or fault of such employe, the rate of pay shall not be reduced.

This rule not to permit using regularly assigned employees of a lower rate of pay for less than half of a work day period, to avoid payment of higher rates."

The record shows that on February 2, 1948, the work performed by Claimants was that of opening and closing a ditch to enable the Water Service forces to make repairs to a 1¼" water line leading to the Roundhouse at Smithville. This ditch ran under the Carrier's tracks. On February 4, 1948, the work performed was that of opening and closing a ditch to enable the Water Service forces to repair a break in a 4" cast iron water pipe. This ditch was near the Carrier's concrete crane pit and alongside its tracks.

While incident to the work performed by these men, since the ditches were dug either under or alongside of tracks, was the maintenance of the Carrier's right-of-way, however, the reason for doing the work and its primary purpose was that of maintaining the Carrier's water supply system, work which belongs to the Carrier's Water Service forces. In view thereof, since the rate claimed is the lowest paid Water Service forces, we find the Committee's position well taken and that the claim is meritorious. For similar holdings see Awards 3638 and 4077 of this Division.

The number of hours that each of the claimants worked at performing these services, on the days involved, is fully set out in the record and will not be restated here. We find it sufficient, particularly in view of the last paragraph of Article 14, rule 1, to sustain the claim for the rate asked.

FINDINGS: The Third Division of the Adjustment Board upon the whole record and all the evidence, finds and holds:

That both parties to this dispute waived oral hearing thereon;

That the Carrier and the Employees involved in this dispute are respectively carrier and employees 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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois this 12th day of September, 1949.