

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Charles S. Connell, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
GALVESTON WHARVES**

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

(1) That the Carrier violated the agreement by assigning Laborer Arthur Woods to work under the supervision of the Pile Driver Foreman and paying him only at Laborer's rate of pay during the period March 27 to March 31 and April 3 to April 8, 1944;

(2) That Laborer Arthur Woods be reimbursed for the monetary loss suffered by him because of this violation of the agreement.

EMPLOYERS' STATEMENT OF FACTS: Arthur Woods, in March and April of 1944, was carried on the Carrier's payrolls as a laborer.

During the period March 27 to March 31 and from April 3 to April 8, 1944 B&B Foreman W. E. Pruett, the foreman supervising Laborer Arthur Woods, was instructed to assign two of his laborers to work at Pier 40 with the Pile Driving Crew.

Foreman Pruett assigned Laborer Arthur Woods as one of these laborers.

During the period referred to Laborer Arthur Woods worked directly under the supervision of the Pile Driving Crew Foreman. The work performed was that of preparing the way for the driving of sheet piling.

During the time that Laborer Arthur Woods was assigned to work with the Pile Driving Crew he was paid the laborer's rate of pay.

The Agreement between the parties to the dispute dated May 1, 1940 and subsequent amendments and interpretations are by reference made a part of this Statement of Facts.

POSITION OF EMPLOYES: There are no laborers attached to the Pile Driving Crew.

B&B laborers, as such, are only found in B&B Carpenter Gangs.

On Page 16 of the printed Agreement dated May 1, 1940, it will be noted that in the listing of the "Salaries-Maintenance of Way Department" the make-up of the various crews are shown. We call attention to the fact that no laborers are contained in the Pile Driving Crew.

Way Employees fairly and justly. However, the employees are not represented by a man who lives in Galveston or who has ever had an employe relationship with the Galveston Wharves. This situation makes it difficult for the officials of the Galveston Wharves to deal with this representative directly, since he knows very little about the nature of our operations. The operation of the railroad by the Galveston Wharves is a very small part of our business, and we have a limited number of employes that are engaged in railroad work. It is our understanding that the General Chairman is connected with a large railroad operating through many states and that there are many fine points in jurisdiction, etc., met by a large railroad employer that have never confronted a line with a small amount of railroad, such as we have. We have done everything within reason to treat our employes properly, but do object to being summoned before your Honorable Board in the case presented against us here. We have never ratified the Agreement made between the Galveston Wharf Company and the Brotherhood of Maintenance of Way Employees. We have looked upon its provisions as a way in which seniority and other provisions of the Agreement are customarily handled in the railroad industry, and have given consideration to all arguments advanced by the Claimant, but we do not recognize the jurisdiction of the Board to consider claims made by the employes of the Galveston Wharves through an employe representative who is not and never has been an employe of the Galveston Wharves, and who is not a resident of Galveston. We respectfully petition the Board to decline the claim here presented by the Brotherhood for the foregoing reasons.

SUMMARY: The Galveston Wharves has shown that at no time has it negotiated an Agreement with the Brotherhood of Maintenance of Way Employees and that it is an agency of the City of Galveston, that its operations are controlled by the laws of Texas, and that these laws forbid us to enter into a collective bargaining agreement with a labor organization. Galveston Wharves has shown that the claim presented by Arthur Woods was declined on October 4, 1944, that it was not progressed thereafter, but lay dormant for several years. They have shown that Arthur Woods was paid the regular rate of pay for laborer, that there is no such position as Pile Driver Laborer, and that no such position had existed at the time the Galveston Wharves began operation of the railroad.

The Galveston Wharves respectfully requests an opportunity to appear before the Board in oral hearing and make such answer to the Organization's submission in this case as may be deemed proper.

Whereas, in consideration of the facts, applicable laws of the State of Texas, and decisions of your Honorable Board in similar disputes, the Galveston Wharves urges that the claim made by the Organization in behalf of Arthur Woods be, in all things, denied.

(Exhibits not reproduced).

OPINION OF BOARD: The Carrier makes the same challenge to the validity of the Agreement in question and the jurisdiction of the Board as it did in Award No. 4756. Our findings as to jurisdiction in that Award will apply here. The Carrier also urges the same defense of laches in the prosecution of this claim and for the reasons set forth in said Award No. 4756 that defense will also be overruled in this case.

The claimant was a laborer assigned to the Bridge and Building Gang. On the dates in question he was assigned to work on Pier 40 with the Pile Driving Crew; he worked directly under the supervision of the Pile Driving Crew Foreman, digging holes for the installation of steel piling. The Employees contend that the claimant during the days in question was a member of the Pile Driving Crew, and as such was entitled to the rates of pay of the lowest rated position, Pile Driver Man, instead of the rate of pay as a laborer. Article XXV, Rule 1 (Composite Service Rules) is the controlling rule in the Agreement.

The Employees contend that the Pile Driving Crew is a separate working

Crew, and has the sole right to perform all work necessary to accomplish the job of pile driving. In the listing of positions and wage rates on page 16 of the Agreement no laborers are assigned to the Pile Driving Crew. When the Carrier assigned claimant to the Crew, under the supervision of the Foreman, the make-up of the Crew was increased and claimant became a member of the Crew and was entitled to the rate of the Pile Driver Man, the lowest rate of pay in the Crew.

There have been previous Awards of this Board which have dealt with similar factual situations, where Carrier had assigned laborers to work with higher rated crews. There the Board has held that even though the claimants performed work generally recognized as laborers' work, nevertheless such employees were performing work of these other classes and should have been paid at the lowest rates of these classes. See Awards 3638, 4077 and 4553. We concur with those Awards and think those Findings are applicable to the facts in this dispute. It follows that the claim should be sustained.

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 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 14th day of March, 1950.