

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 B&B Laborer Alex Woods to the work of a Water Service Mechanic during the period November 20, 1944 and continuing through to the present time, and not so compensating him;

(2) That Laborer Alex Woods should now be reimbursed for all monetary loss suffered by him as a result of this violation of contract.

EMPLOYEES' STATEMENT OF FACTS: Commencing about November 20, 1944 and continuing, the Carrier assigned Laborer Alex Woods to the work of testing fire hose, repairing water buckets, hose racks, water barrels, hangers, etc.

In the performance of the above described work, Laborer Alex Woods was required to use mechanic's tools.

Laborer Alex Woods was paid only at the laborer's rate of pay for the services rendered as described in this claim.

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 EMPLOYEES: We quote below Article XXXIV of Agreement:

COMPOSITION OF BRIDGE AND BUILDING GANG.

Rule 1. "A Bridge and Building Department gang will be composed of the following classes of employees:

- 1st—Forman.
- 2nd—Assistant Foreman—when necessary.
- 3rd—Leading Mechanic—when necessary.
- 4th—Carpenters and/or mechanics.
- 5th—Helpers.
- 6th—Laborers.

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 Alex 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 facts are in dispute. The Employees contend that claimant Woods is carried on the seniority list as a Bridge and Building Laborer, and that on November 20, 1944 and continuing to the present time he was assigned with full responsibility to the work of testing fire hose, repairing water buckets, hose racks, water barrels, hangers, etc. That in the performance of this work he was required to use mechanics tools and was paid only at laborer's rate of pay, and claims rate of pay of a mechanic. The Carrier contends that claimant Woods did not have full responsibility in the Water Service Department, and that the Water Service Supervisor advised that Woods had not used mechanics tools at any time, that he did not repair fire hose, loose racks, buckets or hangers, but he had on occasions tightened up bands on leaky barrels. His principal job was to keep water barrels filled and to clean toilets on the wharves, that claimant held no seniority in the Maintenance of Way Department, and his name was shown on seniority roster by error.

All of the positions of the Maintenance of Way Department effective May 10, 1940, are listed in the Agreement. Employees in the Water Service Department are not listed in the positions shown in the Agreement. Article XXXIV, Composition of Bridge and Building gang states in the last paragraph "Laborers in B&B gangs will be assigned to perform only such work as is performed by common laborers and will not be permitted to perform work involving use of carpenters' or mechanics' tools".

The Employees base their claim on the Composite Service rule, which states that an employee assigned to a higher rated position, whether or not such position is covered by the Agreement, will be paid the higher rate of such position. Their reasoning seems to be that since Claimant Woods was assigned to work in the Water Service Department and used tools in his work, that he is entitled to the mechanics' rate of pay, by reason of the last paragraph of Article XXXIV quoted above. The language of that Article is clear and unambiguous and states that laborers in a Bridge and Building gang shall not be permitted to use carpenters' or mechanics' tools, and it follows that if a laborer on that gang did use such tools on part of the work he performed then he would be entitled to the rate of pay of helper for such work. However, it is clear that the Article only has application to a laborer in a Bridge and Building gang. There is no showing in the record that a like rule governed with respect to Employees in the Water Service Department. Even though it were conceded that said rule did apply in the instant case, we could not agree that the claimant would be entitled to a rate of pay higher than the helper's rate, and surely would not entitle him to the rate of pay for mechanic as is claimed here. The claims will be denied.

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 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 the Carrier did not violate the agreement.

AWARD

Claim denied.

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.