

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Mortimer Stone, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

MISSOURI PACIFIC RAILROAD COMPANY

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

(1) That the Carrier has violated the agreement by not compensating Water Service Repairman F. Wiggins, Memphis Division at the Assistant Water Service Foreman's rate of pay for services rendered while he was performing the duties of an Assistant Water Service Foreman, commencing August 10, 1946 and continuing through until he was relieved from the performance of such duties;

(2) That Water Service Repairman F. Wiggins be reimbursed for the difference in pay received at the Water Service Repairman's rate and what he should have received at the Assistant Water Service Foreman's rate during the period named in part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: The Carrier maintains that Poplar Bluff, Missouri headquarters for Water Service Foreman J. W. Files has jurisdiction over the Water Service Repairman on the Missouri Division and the Memphis Division, but he holds no seniority rights as a repairman on the Memphis Division. At the time this claim arose there was no employee holding seniority rights on the Memphis Division as a foreman.

The Carrier maintains at Wynne, Arkansas on the Memphis Division a headquarters for three Water Service Repairmen and one Water Service Laborer. Mr. Files, who was designated as foreman over these employes at Wynne, visited them only on the average of about 3 or 4 days per month. Meanwhile Water Service Repairman F. Wiggins at Wynne, Arkansas was given by Foreman Files the responsibility of looking after the work at Wynne and over this entire Memphis Division. Wiggins received his instructions from Files either by mail or phone or relayed such instructions to the rest of these Water Service forces at Wynne.

The distance by rail between Poplar Bluff, Missouri to Wynne, Arkansas is 150 miles.

On or about August 10, 1946, and again on September 29, 1946, Wiggins requested of Water Service Foreman J. W. Files that he be paid an Assistant Foreman's rate. There was at this time an Assistant Foreman position at North Little Rock, Arkansas Division, and there was a rate in effect for Assistant Water Service Foreman.

The effective agreement dated July 1, 1938 contains in its Scope Rule classifications of "Water Service Foremen" and "Assistant Foremen".

3. The Carrier has shown that the position of Water Service Repairman clearly comes within the SCOPE RULE of the effective agreement between the parties.
4. A clear outline of the duties and responsibilities attaching to the position of Water Service Repairman is contained in the "Rules and Regulations for the Maintenance of Way and Structures", effective September 1, 1941, several years prior to the initial date of this complaint.
5. Mr. Wiggins performed no duties not contemplated as attaching to the position of Water Service Repairman, the duties and responsibilities attaching equally to other Water Service Repairmen on the Memphis Division.
6. The sole purpose of this claim is to force the Carrier to establish the position of Assistant Water Service Foreman on the Memphis Division.
7. This board does not have jurisdiction to write agreements, nor to establish positions; only to interpret the terms and provisions of existing agreements and to adjust disputes arising between the parties thereto.

Carrier reiterates that there are no rules of the agreement between the parties to this dispute which the organization can properly rely on in support of the complaint and claim in this docket and the arguments advanced by the organization in support of this claim have no merit. The Carrier has violated none of the rules or provisions of the agreement and, therefore, the claim should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: In its Scope Rule the effective Agreement includes "Water Service Foremen, Assistant Foremen, Repairmen, Helpers, Laborers and Pumpers." On Carrier's property one foreman, Mr. Files, had jurisdiction over both the Missouri and Memphis Divisions. His headquarters were at Poplar Bluff, Missouri. At the time of filing this claim, there were stationed on the Memphis Division at Wynne, Arkansas, two repairmen and one Water Service laborer, and at Lexa, Arkansas, a third repairman; but no assistant foreman was assigned to the Memphis Division. This claim is based on the contention of one of the repairmen stationed at Wynne that in fact he performed the duties and should be compensated at the rate of assistant foreman from date of claim, August 10, 1946 until September 1, 1947, when Carrier divided the territory and assigned each repairman to his separate area.

As basis for the claim, Employees state in substance: That the foreman visited them on an average of about three or four days per month; that Claimant was by the foreman given "the responsibility of looking after the work at Wynne and over that entire Memphis Division"; that he received his instructions from the foreman and relayed them to the other employees; that the foreman's headquarters were 150 miles from Wynne, therefore supervision by him was not practicable; and that Claimant supervised the activities of the other Water Service repairmen and the laborer who worked out of Wynne.

Carrier asserts that there is no showing as to the duties of assistant foreman. In the absence of such showing, we must conclude that the duties of that position are, as the name presumes, to assist the foreman in the performance of his duties, including direction of work and supervision of it, and that is the substance of the instant claim.

The duties of a repairman from the General Rules of the Carrier include the following:

"WATER SERVICE REPAIRMEN

"452. Duties.—They shall report to and receive instructions from the Water Service Foreman unless otherwise directed. They shall be

responsible for the proper maintenance of all facilities assigned to them. They must thoroughly familiarize themselves with the type, manner of operation, and care of these facilities, and the location of all pipe and sewer lines on their territories.

They must keep the Water Service Foreman advised of their whereabouts when away from headquarters.

453. Inspections and Repairs.—They must regularly inspect all facilities in their charge as frequently as necessary to insure dependable operation. They shall at the same time make all needed repairs that cannot be made by Pumper or plant operator.

They must report to their Foreman, or man in charge, any neglect or misunderstanding of instructions on the part of pumpers or plant operators, and all other unsatisfactory conditions found; what they did to correct these unsatisfactory conditions; and what, if any additional corrective measures are necessary to complete, or to prevent recurrence.

454. Water and Oil Columns.—They shall maintain water and fuel oil columns and keep them properly adjusted. They shall keep column pit drains or drainage devices in serviceable condition.

455. Care of Station, Office, and Other Building Facilities.—They must frequently inspect plumbing and heating systems in buildings on their territory and make necessary repairs; see that janitors or other assigned employees are properly instructed in the operation and upkeep of heating plants, in the use of disinfectants, and in the cleaning of toilets."

The burden of proof rests on Claimant. The naming of the position in the Rule does not make mandatory its being established except where it is required or its duties are actually performed. The statement of conclusion creates no presumption of inability to supervise, and evidence, alone, that Claimant performed an assistant's work on a single occasion is not sufficient to support a claim for the rate of that position for more than a year's time, as here sought.

The claim rests almost entirely on correspondence consisting of nine letters, between the foreman and employees, or by employees among each other. The Carrier asks that this evidence be stricken on the ground that it was never discussed in conference or through correspondence on the property and that Carrier had no knowledge of its existence, but we find it unnecessary to rule on that motion. We shall not here attempt to analyze these letters. In view of the requirement that repairmen "be responsible for the proper maintenance of all facilities assigned to them" and that they must report to the foreman any neglect or misunderstanding of instructions on the part of pumpers, we think there were no substantial duties required of Claimant not implicit therein. If so, such duties extended at most over a few days only and would not be a basis for the present claim for more than a year's pay. The unexplained fact that another employe addressed Claimant as "Chief Water Service Inspector", carries no implication or presumption of foreman's work. Accordingly, we must find that the proof submitted does not satisfy the burden of proof resting on Claimant.

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 the Agreement was not violated.

AWARD

Claims (1) and (2) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 21st day of March, 1950.