

Award No. 4795

Docket No. MW-4729

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

CHICAGO GREAT WESTERN RAILWAY COMPANY

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

(1) That Section Laborers Elmer Kuethe and Albert Lee were improperly paid while assisting in the installation of a water pipe at Readlyn, Iowa, on the following dates: October 2, 3, 6, 7, 8, 9, 10, 1947;

(2) That Section Laborer R. E. Judas was improperly paid while assisting in the installation of a water pipe at Readlyn, Iowa, on the following dates: October 2, 3, 6, 7, 8, 9, 10, 1947;

(3) That the above named employes be reimbursed for all loss of compensation because of this improper payment.

EMPLOYES' STATEMENT OF FACTS: During the period October 1, 1947, to October 10, 1947, a new water pipe was installed at Readlyn, Iowa, between the Stockyards and the depot. This installation required the digging and back filling of a trench of approximately 450 feet long and of sufficient width and depth.

Section Laborers Elmer Kuethe, Albert Lee, and R. E. Judas were assigned to work with the Water Service Foreman in installing the pipe. The laborers dug the trench, assisted in lowering the pipe by means of a rope into its proper place in the trench, then after the proper connections were made by the Water Service Foreman, these laborers back filled the trench.

These three Section Laborers were paid at their Laborers' rate of pay for all services rendered in connection with the water pipe installation. While performing such services, these laborers were under the supervision and direction of the Water Service Foreman who was responsible for this installation.

Water Service Employees are in the Bridge and Building Sub-department, Group Number 6, and are shown on the seniority roster comprising only this group.

Section Laborers are in the Track Sub-department, Group Number 1(d) and their seniority is separately compiled.

The Agreement between the two parties to this dispute dated April 15, 1940, and subsequent amendments are by reference made a part of this Statement of Facts.

POSITION OF EMPLOYES: We quote below letter of Division Engineer F. J. Hoffman dated November 21, 1947:

it is not even alleged by the employes that four or more hours were expended in such work on any day. As a matter of fact that amount of time could not possibly have been expended in lowering pipe in the aggregate of the eight days covered by claim.

The overwhelming preponderance of work performed by Claimants was that of digging and back-filling a ditch or trench, which is properly classified as laborer's work and the purpose for which the work was necessary has no bearing on the applicable rate of pay for the service performed, inasmuch as there would be no conceivable difference whether trench was used for laying of water pipe or for drainage purposes along the right-of-way.

As previously stated herein, all work was performed by Claimants at the direction and under the supervision of the Section Foreman.

The evidence is replete that Claimants were not assigned to assist a water service mechanic within the meaning of Rule 51(f) and (i) and that there is, therefore, no valid basis for claim for a rate of pay greater than that of Section Laborer, under the terms of Composite Service Rule 36, in view of which there can be no merit in claim under consideration, and the Carrier requests that same be denied.

(Exhibits not reproduced).

OPINION OF BOARD: On the dates mentioned in the notice of claim, claimants worked with a water service mechanic in the installation of about 425 feet of water pipe, some 260 feet of which paralleled the south rail of Carrier's house track about 7.5 feet south of the south rail and the remainder of which crossed and recrossed under the house track in its course from hydrant to outlet in the stock yard. The claimants dug and back-filled the trench in which the pipe was laid and assisted in lowering the pipe into the trench with a rope. Employes claim that claimants are entitled to the rate of water service helpers under the composite service rule. Carrier asserts that the work performed by claimants was merely the digging and back-filling of ditches which is ordinary common laborers' work usually performed by trackmen on this property and hence there is no justification for the higher rate. It is conceded that less than four hours per day was worked in connection with the raising and lowering of the pipe.

The Scope Rule of the involved Agreement provides that seniority of employes is confined to sub-departments in which employed. Section laborers are in the Track Department and water service personnel in three classifications, water service foremen, water service helpers and pumpers are in the Bridge and Building Department. There is no classification of laborer in the water service grouping. Rule 36 (Composite Service Rule) reads as follows:

"An employe required to perform more than one class of work during his day's assignment will be allowed the rate applicable to each class of work for the time actually engaged in each class of work, except that an employe temporarily assigned to a lower rated position will not have his rate of pay reduced. Assisting a higher rated employe for less than four (4) hours will not constitute an assignment to a higher rate."

Rule 51(f) of the Agreement reads as follows:

"An employe assigned to the construction, maintenance, repairing or dismantling of all facilities used in the maintenance of necessary water, steam, oil, gas or air facilities, shall constitute a 'water service mechanic.'"

Rule 51(i) reads as follows:

"Employes assigned to assist the respective mechanics in paragraphs (a) to (h) inclusive, shall constitute helpers."

The work performed by the section laborers as outlined above was clearly not work involved in the maintenance or construction of Carrier's right-of-

way. Clearly, the purpose for which it was done was to construct facilities for the maintenance of necessary water facilities. It is also clear that although the major portion of work performed by the claimants was digging and back-filling, they did participate in the entire operation of getting the pipe into the ground. In essence, the water service mechanic had assistance in the performance of the work of installing the pipe. So far as appears from the record, the only assistance he received was from the claimants. In an operation such as this, we cannot subdivide the nature of that assistance into the elements of that which is strictly of the common labor variety and that which required the exercise of a higher skill and conclude therefrom that only time consumed in the more skilled phase of the work constituted time devoted to assisting the mechanic. (See Awards 565 and 1600). A certain amount of unskilled work is required in the performance of any helper's duties. It is an inescapable conclusion, therefore, that the claimants are entitled to the rate of a water service helper for the work performed. (See Awards 4553, 3678 and 4077).

It appears from the record that the date of October 1, 1948 was inadvertently omitted from Part 1 of the Statement of Claim. The monies payable under the Award herein should include that day.

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 28th day of March, 1950.