

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
DELAWARE AND HUDSON RAILROAD CORPORATION**

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

(1) That the Carrier violated the provisions of Rule 18 of the Agreement effective November 15, 1943, when on June 26, 1948, it assigned Trackmen Artie Bowen, Harry Scott, Clayton Flint, Roy Halolege, Joseph Miller and Arthur Barnhard to unload material for a water tank at Ninevah and paid them for the four (4) hours' time consumed at the trackmen's rate of pay;

(2) That the six (6) above listed trackmen be allowed the difference in pay between what they did receive at the trackman's rate and what they should have received at the Carpenter Helper's rate.

EMPLOYEES' STATEMENT OF FACTS: On June 26, 1948, the six Trackmen named in this claim were assigned to and did assist a B&B Carpenter in the unloading of certain material to be used in the erection of a water tank at Ninevah.

These referred to employees worked a total of four (4) hours each on this assignment. They were compensated at their Trackman's rate of pay for such services.

The Employees have contended that these Trackmen were performing B&B work and should have been paid Carpenter's Helper's rate in accordance with the provisions of the Composite Service Rule 18 of the effective Agreement.

The Agreement between the parties to the dispute dated November 15, 1943 and subsequent amendments and interpretations are by reference made a part of this Statement of Facts.

POSITION OF EMPLOYEES: Rule 18 of the effective Agreement states as follows:

"Employees assigned to higher rated positions shall receive the higher rate while so engaged; if assigned to a lower rated position their rate will not be changed."

It will thus be noted that when an employe is working on a higher rated position he will be paid the higher rate while so engaged.

A Carpenter's Helper is a higher rated position in that he receives seven cents (7c) per hour more than does a Trackman.

In discussing this claim on the property the Carrier has contended that the unloading of this building material "was only ordinary laboring work

directed the men in the proper way to stack the lumber, while this laboring work was being performed, was neither building or repairing any structure. The duties of a trackman, however, are various. They may be required to dig ditches, spread stone, load or unload cars, shovel snow or dirt, carry material, or many other duties, all of which could rightfully be classified as laboring work. On this date they merely unloaded and piled the lumber and were in no way involved in any work which could be construed with the use of the material.

The Committee has premised its claim on a violation of Rule No. 18 of the Agreement which reads:

Rule No. 18—Agreement effective November 15, 1943

"Employees assigned to higher rated positions shall receive the higher rate while so engaged; if assigned to a lower rated position, their rate will not be changed."

Part (1) of the claim is clear in that it states the men were assigned to unload material for a water tank. There is nothing in the claim that describes in what manner they could have performed service as carpenter helpers. The Carrier agrees that the men were assigned to unload this lumber and in doing so were performing laboring work and contends that such work, or like duties, has always been performed as a part of the every-day assignment of trackmen prior to and subsequent to June 26, 1948 and is supported by affidavits of the Road Master, Marked Exhibit "A", Track Supervisors, Marked Exhibit "B" and "C", Bridge and Building Master, Marked Exhibit "D", and from Section Foremen, marked Exhibit "E", "F", "G", "H", "I", "J", "K", "L", and "M".

(Exhibits not reproduced).

OPINION OF BOARD: June 26, 1948, Claimants, trackmen, were assigned to unload material to be used in the construction of a water tank at Ninevah. It appears that the lumber was to be placed in storage and in order to prevent warping, it had to be properly stacked. A carpenter was therefore on the ground to advise the Claimants in the correct way to store the same. Employees claim the carpenter helper's rate should have been paid to Claimants for this service citing Rule 18 which reads as follows:

"Rule 18. Employees assigned to higher rated positions shall receive the higher rate while so engaged; if assigned to a lower rated position their rate will not be changed."

Carrier argues that in unloading the lumber, the Claimants were performing laboring work and have always performed such work prior and subsequent to June 18, 1948. Carrier submits a number of Exhibits evidencing the practice of trackmen unloading material prior to 1939, the effective year of its first Agreement with the Organization and continuing through the year 1948.

There are a number of Awards of this Board dealing with the problems similar to that involved in this docket. Of course, such Awards must be considered in the light of the Agreement provisions involved and the factual situation presented. Much reliance is placed by the Employees upon language of those awards holding that it is the reason for the work or the purpose for which it is performed which determines where the work belongs and hence the rate to be paid. For example, in Award 3638 it was held that section men, while assisting and under the general supervision of a telegraph lineman engaged in the work of cutting and trimming of underbrush at the behest of and for the benefit of the telegraph department, were entitled to the rate of linemen helpers. In Award No. 4795 we sustained the claim of trackmen for Water Service Helpers rate, where it was shown that they dug ditches and did some minor work in connection with the installation of a water line while the water mechanic was engaged in the construction of the same. In those cases there was a close relationship between the work performed by the section men or trackmen and the work which the higher skilled mechanic was performing in the actual construction or maintenance of the facility. Hence, there was an element of assistance to the more skilled employe in the

actual performance of work primarily and substantially requiring the exercise of his skill. We believe the basis of those awards to be fundamentally sound. Here, however, the work of unloading the materials was purely for the immediate purpose of storage, one removed from the actual building or repair of the tank itself. The practice of using section men for the performance of this type of work is clearly established. We cannot say that the practice is in derogation of the clear language and intent of the Agreement, since the Agreement does not by wording nor necessary implication set aside this type of work as belonging to any particular classification of employees. Nor does it clearly restrict the work of the classification of trackmen. In this respect therefore this case is distinguishable from Awards 2655 and 3589 cited by the Employees in support of their contention herein.

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 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 28th day of March, 1950.