

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Mortimer Stone, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

THE DELAWARE AND HUDSON RAILROAD CORPORATION

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

(1) That the Carrier violated the effective Agreement when it assigned Trackmen to perform Plumber Helper's work at Cherry Valley during the period February 17, to February 24, 1950, both dates inclusive, and failed to compensate them at the Plumber Helper's rate of pay for service rendered;

(2) That the Trackmen assigned to the above referred to work be paid the difference between what they did receive at the Trackmen's rate of pay and what they should have received at the Plumber Helper's rate of pay.

EMPLOYEES' STATEMENT OF FACTS: On or about February 17, 1950, the Carrier assigned a group of plumbers to find and repair a leak which had developed in their underground water line at Cherry Valley, New York.

The Carrier assigned Trackman K. Thompson and other trackmen to accompany the Plumbers for the purpose of assisting in the search for, and repair of the leak in the water line. The trackmen performed all of the necessary excavation work in connection with the above project under the direction of a plumber, from February 17, 1950 to February 24, 1950, both date inclusive.

The plumbers subsequently repaired the leak. Four plumbers performed all necessary backfilling work on February 27, 1950.

The Carrier compensated the trackmen at their regular rate of pay and has consistently denied to allow them payment at the plumber helper's rate of pay as requested by the Employees.

Rule 36(a) of the agreement carries a plumber helper's classification and rate of pay attached to such positions.

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

opening and closing the trench. Settlement on this basis was accepted by the General Chairman.

Employees for whom claim is made in the instant case were not required to do anything but open the trench and fill in the trench after the plumber and helper had installed the pipe.

Carrier requests denial of this claim due to the fact that trackmen did not perform any duties other than those which are a part of their normal occupations.

Management affirmatively states that all matters referred to in the foregoing have been discussed with the Committee and made part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant Trackmen were used to excavate a trench parallel to the track in order to install a new water line and seek pay at Plumber Helper's rate for the service under the Composite Service rule.

Claimants were assigned to accompany a Plumber and Plumber's Helper who sought to find and repair a leak in the underground water line. The Trackmen performed the excavation work under the direction of the Plumber, then the latter and the Plumber's Helper made the repair and the Trackmen shoveled the back-fill.

Carrier relies on prior settlement of another claim and upon the fact that no service was rendered nor tools used except such as are part of the normal occupation of Trackmen.

Employees contend that the purpose for which the work is performed determines its class.

Carrier's prior settlement involved a claim where Trackmen both excavated and assisted in moving pipe for installing a pipe line. While Carrier offered settlement saying that the claim was not entertained on the basis of digging trench, the acceptance of full payment of the claim by employees was not conditioned on agreement or admission as to such limitation.

Here involved is not work by a separate crew working alone as in Awards 4797, 5889 and 6007, nor of two crews working in conjunction on an overall project, each performing "divisible" work in its recognized domain, as in Award 5491.

Instead, Claimants were assigned to work with and under supervision of a Plumber for the purpose of assisting him, virtually as members of his crew, as in Award 4757. The primary purpose of the work was that of making repairs to Carrier's water line, as in Award 4553, and they were entitled to Plumber Helper's rate of pay.

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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 30th day of March, 1953.

DISSENT TO AWARD 6165, DOCKET MW-6241

Here we have the unconscionable situation of the majority's holding that Award 4553, entered on another Carrier, is controlling in preference to four later Awards entered on the same Carrier under the same rules and practices, viz., Awards 4797, 4798, 6007, and 6053. The latter Awards were not based upon "a separate crew working alone" or "performing 'divisible' work in its recognized domain", but, on the contrary, and as shown by the majority opinions therein, the controlling determination was the long standing practice on this Carrier and the absence of rules supporting the claims. This is clearly expressed in the following excerpt from Award 4797:

"The practice of using section men for the performance of this type of work (laborers' work in the B&B Department) 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." (Parenthetic interpolation added).

The instant Award can but create chaos insofar as this particular Carrier is concerned and for that reason we dissent.

/s/ W. H. Castle

/s/ R. M. Butler

/s/ J. E. Kemp

/s/ E. T. Horsley

/s/ C. P. Dugan