

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Mortimer Stone, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
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 Oneonta during the period February 15, to February 17, 1950, both dates inclusive, and failed to compensate the Trackmen so assigned at the Plumber Helper's rate of pay;

(2) That the Trackmen assigned to the work referred to in Part (1) of this claim, be allowed the difference between the amount received at the Trackmen's straight time rate of pay and what they should have received at the Plumber Helper's rate of pay.

EMPLOYES' STATEMENT OF FACTS: The Carrier assigned Trackman Bailey and other trackmen to assist plumbers at Oneonta, New York, search for and repair a leak in the water main at the Oneonta Pump Station.

The trackmen above referred to, performed such assistance to plumbers by doing all necessary excavating on February 15, 16, and 17, 1950. The Carrier has declined to compensate the claimants at the plumber helper's rate of pay as requested by the Employees.

Rule 36(a) of the effective agreement carries a plumber helper's classification and the 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.

POSITION OF EMPLOYES: Rule 18 of the effective agreement, which is herein controlling, 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."

The Carrier is thoroughly familiar with the accepted interpretation of the above rule, but has based its denial of the claim upon the erroneous contention that excavation work in connection with repairs to a water line is not work generally recognized in the railroad industry as work of a plumber

make the required repairs. Upon completion of repairs, the trackmen back-filled the trench.

The trackmen were not required to assist the plumbers in any of their duties. All that was required of the trackmen was to dig the opening to expose the leaking pipe and when the plumbers had made repairs, to close same.

POSITION OF CARRIER: The principles involved in this case are the same as those involved in Case No. 18.50 M.W. which is being submitted ex parte by the Brotherhood of Maintenance of Way Employees to the Third Division, National Railroad Adjustment Board.

Carrier submits the argument and evidence presented in Case No. 18.50 M.W. to sustain its position in the instant case.

OPINION OF BOARD: The facts here involved are essentially the same as those in Award 6165 and the same result should follow.

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 Employee involved in this dispute are respectively carrier and employes 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 6166, DOCKET MW-6242

Dissent to Award 6165 is applicable hereto.

/s/ W. H. Castle

/s/ R. M. Butler

/s/ J. E. Kemp

/s/ E. T. Horsley

/s/ C. P. Dugan