

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

LeRoy A. Rader, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY

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

(1) The Carrier violated the effective Agreement when it failed to use Yard Cleaner J. H. Barker to perform yard cleaner's duties on January 13, 20, 27, 1952 and on February 3, 17, 23, 1952, and in lieu thereof assigned the work to a section laborer;

(2) Yard Cleaner J. H. Barker be reimbursed the exact amount he lost as a result of the Carrier's action in violating the Agreement as referred to in part (1) of this claim, totaling twenty (20) hours and forty (40) minutes at overtime rates of pay, itemized as follows:

January 13, 20, 27, 1952—Four (4) hours each day.

February 3, 1952—two (2) hours and forty (40) minutes.

February 17, 23, 1952—three (3) hours each day.

EMPLOYEES' STATEMENT OF FACTS: The Claimant, J. H. Barker, is regularly employed as a Yard Cleaner at Chariton, Iowa, and is regularly assigned to a work week of Mondays through Fridays. Saturdays and Sundays are days which are not a part of the Yard Cleaner's assignment. Section forces assigned to this station are similarly assigned to a work week of Mondays through Fridays, with rest days being designated as Saturdays and Sundays.

The Yard Cleaner's position held by Claimant Barker at Chariton, Iowa, since 1941, is the only position of that classification established at Chariton, Iowa. Since this position has been in existence at Chariton, Iowa, the occupant thereof has been assigned to general yard cleaning duties, including the cleaning of the cinder pit located at that station. It is frequently necessary to have the cinder pit cleaned (emptied) on Saturdays, Sundays and/or holidays, i.e., days which are not a part of the Yard Cleaner's assignment or part of the assignment of the section forces at Chariton.

However, when such services were required on a Saturday, a Sunday, or a holiday, the Carrier called a section laborer to perform the cinder pit

OPINION OF BOARD: Two issues are presented for our determination in this claim.

Petitioners contend Claimant, employed by Carrier in 1925, has since 1941 been regularly assigned at Chariton, Iowa to perform general yard cleaning duties, including the cleaning of cinders at that station. And that on the dates mentioned in the foregoing claim Carrier failed to use him to perform cleaner's duties and in lieu thereof assigned the work to a section laborer.

Respondent Carrier takes the position that the claim was not properly progressed and thereby it is barred by the time provisions of Rule 57. Also that there is no merit to the claim. This, by reason of the fact that there is no position designated as yard cleaner at this station and that Claimant's employment status is that of a section laborer and the work in question was performed by section laborers with greater seniority status than Claimant possessed on the dates in question.

We view the first proposition to be decided is the jurisdictional question presented. Rule 57 provides in part

"(a) * * * In event of failure on their part to agree on a satisfactory basis for its disposal, appeal may be taken in succession up to and including the Chief Operating Officer of the Company designated to handle such matters, provided the last officer to handle the matter is notified within thirty (30) days of date of his decision that appeal is to be taken, and provided that appeal actually is made within ninety (90) days of date of decision of the last officer to handle the matter. * * *

"(b) A claim or grievance presented later than ninety (90) days from the initial date of occurrence will not be recognized by either party. Similarly, failure to comply with the conditions provided for appeals in paragraph (a) of this rule will be conclusive that the matter has been dropped and the issue closed, unless extension of time is agreed to in the meantime.

"(c) * * *."

The progression of the claim as shown by the record reveals that the ninety (90) day provision in the above cited rule was not complied with, therefore the claim is not properly before us and there is no record of any agreed to extension of the time limitation, as provided by Rule 57. See Awards 6396, 6804, 6488 and First Division Award 15364.

However, the merits likewise do not support the position of Petitioners. We note by the record a letter directed to Mr. G. M. Youhn, 547 W. Jackson Blvd., Chicago, Illinois, dated October 31, 1952 and signed by G. E. McNulty, General Chairman, which states:

"We are appealing to you from the decision of Supt. Wesson pertaining to the claim of Section Laborer J. H. Barker.

"In line with his service as a yard cleaner he is required to clean cinder pit in the Chariton Yard however on rest days and holidays when this work is necessary a junior section laborer is called.

"It is our contention that when these services are required outside the service of the so called yard cleaner Mr. Barker should be called instead of reverting to the section crews at that point.

"If you will refer to the Ottumwa Division seniority roster you will find that Chariton, Iowa has no yard cleaners listed therefore Barker has no other seniority than that of section laborer.

"We maintain that when cleaning cinder pit service is needed and section men used then section laborer seniority should apply.

"Since Mr. Wesson declined the claim our only alternative is to appeal it to you. We are furnishing him a copy of this letter which will serve as his notice of appeal."

Apparently to sustain this claim we would have to designate Claimant a Yard Cleaner or so consider him. This we have no right to do. Also we find no showing herein that Petitioners have met the burden of proof theory recognized in numerous awards of this Division. The section laborers used to perform the work in question are stated to be senior to Claimant and we find no showing that such is not the fact. See Awards 6114, 4011, 2577 and 5445.

On the jurisdictional question Petitioners cite several awards, however, an examination of those awards show that rules different than Rule 57 of the current agreement were the basis for findings made therein.

On the two issues here for determination we find the position of Carrier to be correct. There is some discussion of settlement in the record, but we do not deem it within our province to consider the same as our duty is to interpret rules of the agreement; the parties in discussions and negotiations on the property may agree on any matter, but such is not possible here under the law which created this Board as we are limited in our consideration of claims, as stated above.

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

The Agreement was not violated.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois this 15th day of April, 1955.