

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Hubert Wyckoff, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
MISSOURI-KANSAS-TEXAS RAILROAD COMPANY**

**MISSOURI-KANSAS-TEXAS RAILROAD COMPANY
OF TEXAS**

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

- (1) The Carrier violated the agreement when it refused to compensate Section Laborers L. Z. Watson, Charlie Pritchett, Ernest D. Sullivan and E. W. Grant at the Water Service Helper's rate of pay for the time in which they were engaged in assisting the Carrier's Water Service forces in installing water service facilities between July 16 and July 25, 1951, both dates inclusive;
- (2) The claimants named in part (1) of this claim be allowed the difference between what they were paid at the Section Laborer's rate of pay and what they should have been paid at the Water Service Helper's rate of pay account of the violation referred to in part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: The claimants hold seniority as Section Laborers and are regularly assigned to Section No. 506.

During the period July 16 to July 25, 1951, both dates inclusive, the Carrier assigned its Water Service employees to the work of relaying water line to the section house at Grandfield, Oklahoma.

Section Laborers L. Z. Watson, Charlie Pritchett, Ernest D. Sullivan and E. W. Grant, were assigned on various days during the above referred to period, to excavate the required ditch and to backfill after the water service employees had installed the water pipe.

The performance of work of this character is outside of their usual and customary duties as section laborers.

The Carrier refused to compensate these employees at the water service helper's rate of pay for services rendered in assisting the water service employees in the performance of the above referred to work.

Claim was filed in behalf of the above named claimants and claim was declined.

as work covered by the agreement applicable to Water Service and Plumbing Service employes on this Carrier, but worked separately on an overall project in conjunction with one another as laborers under the supervision of their own foreman.

tatives.

The Carrier respectfully requests that the Board deny the claim.

Except as expressly admitted herein, the Carrier denies each and every, all and singular, the allegations of Petitioner's claim, original submission and any and all subsequent pleadings.

All data submitted in support of Carrier's position as herein set forth have been heretofore submitted to the employes or their duly authorized representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: This claim by section laborers for the helper's rate of pay on account of work performed assisting Water Service Department employes who are covered by the Sheet Metal Workers' Agreement.

There is no classification of laborer and no rate of pay for laborers in the Sheet Metal Workers' Agreement. The lowest rate of pay established under that Agreement is the helpers' rate. Thus, when laborers are spoken of, no other laborers could be meant except section laborers who have commonly and traditionally assisted Water Service Department employes.

The Sheet Metal Workers' Agreement has always provided that laborers, when used as helpers, will be paid the helpers' rate. Thus, when section laborers are used to perform the higher skilled work of helper along with the work of laborer, the helpers' rate is payable under the Composite Service Rule (Awards 1600, 4795, 5484 and 5305).

The 1950 Amendment to the Sheet Metal Workers' Agreement, which was adopted after the decision in Award 4553, defines the types of service for which laborers may be used: "digging, filling and backfilling." The Agreement as amended now read as a whole makes it quite clear that the laborers referred to are section laborers and that they will be paid the helpers' rate when used as helpers but not when used as laborers for digging, filling and backfilling.

It is established by this record that Claimants were not used as helpers, but were used as laborers, under the immediate supervision of their own section foreman, digging, filling and backfilling, which work is covered by their own Agreement.

It follows that "the rate applicable to the character of work preponderating for the day" under Article 15 was the section laborers' rate and that the Sheet Metal Workers' Agreement provided no higher rate for the particular work performed.

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 Employes 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

The Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 8th day of July, 1955.