

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward A. Lynch, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

**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 compensated Section Laborers William Talbot and R. L. Ruggs at the section Laborer's rate of pay instead of at the electrician helper's rate of pay for June 9 and 10, 1953, during which time they were engaged in assisting electricians in resetting electric poles; installing 'dead-men'; stringing, installing, and stretching electrical wires, etc.;

2. William Talbot and R. L. Ruggs now be allowed the difference between what they received at the section Laborer's rate and what they should have received at electrician helper's rate for the services rendered on June 9 and 10, 1953."

EMPLOYES' STATEMENT OF FACTS: Section Laborers William Talbot and R. L. Ruggs were, on June 9 and 10, 1953, instructed to and did assist Electrical Department Employees in re-setting electric poles; installing "dead-men"; stringing, installing and stretching electrical wires.

The Employees contend that this service was subject to the provisions of Article 15, Rule 1, of the effective Agreement, which provides that an employe working on more than one class of work on any day will be allowed the rate of pay applicable to the character of work preponderating for the day. The Sectionmen assigned to this work were compensated for services performed at their regular Sectionman's rate of pay.

The Carrier contends that this service performed was solely Labor's work and therefore, claimants' regular rate of pay was applicable.

Claim was denied by the Carrier.

The Agreement in effect between the two parties to the dispute, dated September 1, 1949, and subsequent amendments and interpretations are by reference made a part of this Statement of Facts.

POSITION OF EMPLOYES: As pointed out in the Employees' Statement of Facts, Trackmen William Talbot and R. L. Ruggs were assigned

For each and all of the foregoing reasons, the Railroad Company respectfully requests the Third Division, National Railroad Adjustment Board, deny said claim, and grant said Railroad Company such other relief to which it may be entitled.

(Exhibits not reproduced.)

OPINION OF BOARD: The argument offered before the Referee by the Organization may be summarized as follows:

"These employees performed the work of a higher rated classification. * * *

"Under the (Composite Service) rule referred to, Carrier is required to compensate them at the rate applicable to the higher rated classification. * * *

"The work performed by these employees, regardless of its nature, was integrated with and complementary to the work being performed by the electrical forces. It was electrician helper work. * * *

Organization had described this work as "resetting electric poles; installing 'dead-men'; stringing, installing, and stretching electrical wires."

Among the many Awards cited by or in behalf of Organization is Award 4553, reading in part as follows:

"While incident to the work performed by these men, since the ditches were dug either under or alongside of tracks, was the maintenance of the Carrier's right-of-way, however, the reason for doing the work and its primary purpose was that of maintaining the Carrier's water supply system, work which belongs to the Carrier's Water Service forces. In view thereof, since the rate claimed is the lowest paid Water Service forces, we find the Committee's position well taken and that the claim is meritorious. For similar holdings, see Awards 3638 and 4077 of this Division."

Carrier raises a question as to this Division's jurisdiction over the instant claim because claimants here "allege they were assigned for the time claimed as electrical worker helpers," and "the Second Division of the National Railroad Adjustment Board has exclusive jurisdiction over electrical workers and their helpers."

We do not think Carrier's point is well taken. Certainly Maintenance of Way Department employees are covered by the Third Division, and it is only through the Third Division that such employees may petition the National Railroad Adjustment Board for redress of their grievances. See Award 4553.

Carrier's description of the work done by Claimant is at variance with Organization's description.

Carrier asserts Section Laborers Talbot and Ruggs "dug holes for one electric light pole and guy anchor and filled one hole after a pole had been jacked out of the ground. They also assisted in carrying some wire across the turntable, which latter effort took about ten minutes."

Carrier states flatly in its ex parte submission that claimants "did not install 'dead men' and did not string, install or stretch electrical wires as alleged. The electricians performed all electrician and electrician helper's work and all work requiring skill."

The Carrier member of this Board who argued this case also noted this denial, "without contradiction from the Organization."

Carrier relies on Award 7049 (Wyckoff) and it is argued in behalf of Carrier that "the facts in Award 7049 are 'on all fours' with the facts in this case. There is no classification of Laborer and no rate of pay for Laborers in the Electrical Workers Agreement here just as there was none in the Sheet Metal Workers' Agreement in that case. In both cases, the Claimants were not used as helpers, but were used as Laborers, under the immediate supervision of their own Section Foreman, digging and back-filling, which is the kind of work covered by Article 5, Rule 11 of their own agreement."

In view of the record here made, we must and do agree with Carrier. The claim will be denied.

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

That the Agreement was not violated.

AWARD

Claim (1) and (2) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of October, 1957.