

Award No. 12470
Docket No. MW-11913

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Joseph S. Kane, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
LEHIGH AND NEW ENGLAND RAILROAD COMPANY**

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

(1) The Carrier violated the effective Agreement when, on March 16, 1959 and on dates subsequent thereto, it required Mr. Alfred Lugg to perform the duties of a B&B Helper and failed and refused to compensate him at the B&B Helper's rate of pay for such service.

(2) Because of the violation referred to in Part (1) of this claim, Mr. Alfred Lugg be allowed the difference between what he received at B&B Laborer's rate and what he should have received at the B&B Helper's rate for such service rendered since March 16, 1959.

EMPLOYES' STATEMENT OF FACTS: On March 16, 1959 and on dates subsequent thereto, the claimant, who has established and holds seniority in the Bridge and Building Sub-department, was assigned to and required to perform the usual and traditional duties of a Bridge and Building Helper at Pen Argyl, Pennsylvania.

Specifically, the B&B Helper's duties performed by the claimant consisted of checking the stoker-fired stationary heating plants in the boiler-house and M. of W. shop at Pen Argyl, servicing maintenance of way trucks, i.e., replenishing the gas and oil, filling radiators and changing tires if necessary.

The Carrier, instead of compensating the claimant at the B&B Helper's rate, compensated him for such service at the B&B Laborer's rate of pay.

Consequently, the subject claim was presented and handled in the usual and customary manner on the property, but was declined at all stages of the appeals procedure.

The Agreement in effect between the two parties to this dispute dated December 1, 1942, together with supplements, amendments, and interpretations thereto is by reference made a part of this Statement of Facts.

OPINION OF BOARD: The position of helper at Pen Argyl, Pennsylvania was abolished on June 1, 1958. Subsequently, on October 1, 1958 a position of laborer was created at the same location. The Claimant was assigned the position according to Rule 4(a). In December, 1958, he requested a transfer and another employe was assigned the position until March 16, 1959. On that date the Claimant returned to the position as the occupant was transferred.

The Claimant now seeks compensation at the helper's rate for services since March 16, 1959 as he had performed helper's work, rather than laborer's work. It appears from the record that prior to June 1958 the position was classified as a helper. The Claimant contends the work was the same as that performed prior to June, 1958. The work consisted of checking the heating plant, servicing Maintenance of Way trucks, replenishing the gas and oil, filling radiators and changing tires if necessary. The Carrier contended the position was different, in that, prior to June, 1958 the helper did equipment repair work and also worked part time on Saturday and Sunday. The Claimant alleged a violation of Rule 3(g) and 7(u).

The facts and circumstances as presented do not show a violation of Rule 3(g) or 7(u). The Claimant accepted the position as a laborer, he also occupied the position as a laborer and now is returning to the same position. The position erroneously or not has always been classified, since October 1, 1958, as that of laborer. Thus for Rule 7(u) to apply the Claimant would have to be replacing an employe receiving a higher rate of pay; actually the Claimant was taking the place of a laborer who was being transferred.

Sharp conflict exists in the record as to whether the duties of the position are different in 1959 than they were prior to June 1, 1958. The only evidence in the record is statements for and against the respective positions by representatives of the Carrier and Organization. No evidence is presented by any occupant of the position prior to June 1958 or during 1959 as to what the position entailed. We are of the opinion that this evidence is necessary in order to determine whether the position has been down-graded or not:

The real issue in the dispute is whether Rule 9 of the Agreement was violated. It is as follows:

" . . . When new classifications are established within the scope of this agreement, rates of pay therefor will be a matter of negotiation between the Engineer Maintenance of Way and the General Chairman."

The record shows the position was abolished and revived with a change in job classification of one position. Rule 9 provides for negotiation on this subject; none was had. Thus the Agreement was violated as to Rule 9.

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 Rules 3(g) and 7(u) of the Agreement were not violated.

That Rule 9 of the Agreement was violated.

That it has not been proven that the Claimant was occupying the position of helper as alleged in the claim.

AWARD

Claim sustained and denied according to the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of April 1964.