

Award No. 13726
Docket No. MW-15051

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

**THE DENVER AND RIO GRANDE WESTERN
RAILROAD COMPANY**

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

(1) The Carrier violated the Agreement when it assigned B&B Helper A. R. Litzenburger to assist Steelman First Class Marion F. Goss beginning on August 29, 1963 and continuing through September 12, 1963 (88 hours total), then failed and declined to pay him at the third class steelman's rate of pay for such service (Carrier's File MW-3-64 . . . General Chairman's File D-5-49).

(2) Mr. A. R. Litzenburger now be allowed the difference (15 cents per hour) between what he was paid at the B&B Helper's rate and what he should have been paid at the Steelman Third Class rate of pay for 88 hours (a total of \$13.20).

EMPLOYEES' STATEMENT OF FACTS: The claimant was regularly employed as a B&B helper in Gang 7180, headquartered at Burnham, Colorado.

From August 29 through September 12, 1963, both dates inclusive, the claimant performed the customary and traditional work of a third class steelman when he assisted First Class Steelman Marion Goss in performing the work of cutting, bending, welding and installing angle iron for the walkways on the auto unloading dock located at the North Yard, Denver, Colorado. For this service, the claimant was compensated at the B&B helper's rate of pay.

During this period, the claimant was working under the supervision of a steel foreman.

Claim was timely and properly presented and handled at all stages of appeal up to and including the Carrier's highest appellate officer.

The Agreement in effect between the two parties to this dispute dated February 1, 1941, together with supplements, amendments and interpretations thereto is by reference made a part of this Statement of Facts.

working in the machine shops, diesel repair shops and the car shops all have occasion to apply bolts and tighten same with a wrench. The list goes on and on. In any event, the work is not exclusively the "... class of work ..." of a steelman, and claimant is not entitled to that rate of pay for the work involved. The work may properly be said to be work incidental to the work of a steelman, just as it is work incidental to the work of a machinist, a carman, a laborer, including a B&B Department laborer and a B&B helper.

The truth of the matter is that claimant was performing work which a laborer could have performed, and the only reason he was not paid a laborer's rate of pay instead of the higher B&B helper rate was because of Rule 18 (b), which states:

"(b) For employes regularly assigned to higher rated position and temporarily assigned to a lower rated position their rates will not be reduced."

CONCLUSION

Carrier's position is summarized in its February 19, 1964 letter to the General Chairman denying this claim on the property which is set forth above in Carrier's Statement of Facts.

For all the above reasons, this claim should be dismissed or denied.

OPINION OF BOARD: From August 29 through September 12, 1963, A. R. Litzenburger, a B&B Helper, assisted Steelman First Class Marion F. Goss in installing steel walkways on the auto unloading dock located at the North Yards in Denver, Colorado. Mr. Litzenburger contends that he should be paid the higher Steelman Third Class rate, which is the lowest pay of three Steelman sub-classifications rather than the B&B Helper rate he received. He argues that the work he performed in assisting the First Class Steelman was steel work and he seeks payment under Rule 18(a). He further asserts that the Agreement makes no provision for a helper and, hence, his assistance to a Steelman constituted steel work of the least skill, which is that of a Third Class Steelman.

Carrier denies that Claimant performed work that comes under the classification of steel work, and asserts that the Agreement does make provision for a helper to assist a Steelman.

The work Claimant performed in assisting the Steelman First Class consisted of applying bolts through hand rails and of tightening of these with a small wrench. Such work required neither special skills nor special tools.

The Scope and other rules of the Agreement do not reserve exclusively to Steelmen the work that Claimant performed. This work is incidental to the work of a Steelman, and may be performed by a helper. Furthermore, the Scope Rule 1(3) lists a classification of helpers to mechanics, and Steelmen are considered mechanics under Rule 9(b). Thus, we find that Steelmen may have helpers not in the classification of Steelman Third Class. In the instant case, Mr. Litzenburger did not perform the work of a Steelman, and, therefore, his claim for compensation at Steelman Third Class rate is denied.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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

That the Agreement of the parties was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 13th day of July 1965.