

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Dozier A. DeVane, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY
(Lines West of Mobridge)**

STATEMENT OF CLAIM: "Glenn Bunn, employed in coal chute at Hettinger, N. D., claims, first; that he should be reclassified and paid as a coal chute foreman at the rate of \$110.10 per month, and second; that he be paid the difference between the rate now received—41¢ per hour, and that which he should have received—\$110.10 per month for time worked since January 3, 1936.

"I. E. Shear, employed in coal chute at Mildred, Montana, claims, first; that he should be reclassified as coal chute foreman at the rate of \$110.10 per month, and second; that he be paid the difference between the rate now received—39½¢ per hour and that which he should have received—\$110.10 per month for time worked since March 20, 1936."

JOINT STATEMENT OF FACTS: "The coal chutes at Hettinger, N. D., and Mildred, Montana, are mechanical chutes, gas engine operated.

"Prior to January 3, 1936, Glenn Bunn was classified as a coal chute foreman at Hettinger, at the rate of \$110.10 per month. Effective January 3, 1936 he was notified his position of foreman was discontinued and position of coal chute laborer established at the rate of 41¢ per hour, and was advised that the section foreman having charge of the section at Hettinger would prepare and submit necessary reports in connection with the coal chute.

"Prior to March 20, 1936, I. E. Shear was assigned as coal chute foreman at Mildred, at the rate of \$110.10 per month. Effective as of March 20, 1936, he was notified his position of foreman was discontinued and position of coal chute laborer established at the rate of 39½¢ per hour and was advised that the section foreman having charge of the section at Mildred would prepare and submit necessary reports in connection with the coal chute.

"The organization and the carrier request the privilege of oral and other proper presentation at time hearing is held."

POSITION OF EMPLOYES: "As indicated in the Statement of Claim and Joint Statement of Facts, the present dispute involving Glenn Bunn, Hettinger, N. Dak. dates back to January 3, 1936, and that of I. E. Shear from March 20, 1936. However, the service condition which occasioned this dispute originated in the early part of 1933, when on April 17, 1933, I. E. Shear was reclassified from coal chute foreman at the rate of \$110.10 per month to that of coal chute laborer at the rate of 39½¢ per hour, and on April 24th, Glenn Bunn was reclassified from coal chute foreman at the rate of \$110.10 per month to that of coal chute laborer at 41¢ per hour.

by the Roadmaster's statements, as well as the signed statement of Section Foreman Clellan and of the coal chute laborer who succeeded Laborer Shear, shown on the statement dated December 1, 1938, as Jack Holt. Coal Chute Laborer Shear having retired July 1, 1937, was not available to sign the statement referred to.

"Representatives of the employes submit reference of the similarity of this case to that involved in Docket MW-498 (Award 464) where the Award sustained the employes; thereby their position is that they should be sustained in this case. The carrier would understand that the Findings of your Honorable Body in Award 464, as indicated in the Opinion of the Board, were that the reclassification of the position 'was not shown to have been accompanied by a discontinuance and reassignment to other employes of duties formerly attached thereto' whereas the carrier holds in the case of Mildred and Hettinger that the reclassification of the position was accompanied by a discontinuance and reassignment of duties formerly attached thereto to the extent that the remaining duties required of coal chute employes at Hettinger and Mildred were confined entirely to the usual service required of a coal chute laborer.

"Reference is made in Exhibit 'B' contained in the Employes' Position to duties outlined in the General Manager's letter of January 12, 1934, as being turned over to the Telegraph Operator. The reports referred to were additional reports required by the Division Engineer, and were discontinued in 1934. The ordering of coal, reporting the amount delivered to engines, amount on hand, and unloaded in dock were handled by the agents at Hettinger and Mildred prior to 1933, and have been handled by them continuously since that time as evidenced by the statements contained in the Position of the Carrier. In other words, the coal reports required of agent's forces were in effect prior to 1933 and are still in effect. Therefore, the reference to transferring duties to a craft not covered by the Maintenance of Way Agreement would not be entirely in accordance with the facts.

"The positions of coal chute foremen on this property are and have been included in successive agreements effective between the parties up to and including the present agreement, and cover the positions as they existed at Hettinger and Mildred prior to 1936. Identically, the positions of coal chute laborers have been recognized as being included in successive agreements between the parties up to and including the present agreement, and for a long period of years there was sufficient work to require the employment of one or more laborers in the mentioned coal chutes. With the falling off in business subsequent to 1930, the use of laborers was intermittent, and with the marked falling off that occurred in 1933, and no indication that increased force would be required, it was decided to discontinue the positions of coal chute foreman at Hettinger and Mildred entirely and place the supervision of the coal chutes under the jurisdiction of the section foremen having headquarters at each of these points.

"Through some misunderstanding, the officers in charge failed to relieve the coal chute employes of supervisory duties such as the rendering of reports, ordering coal and supplies, and the employment of additional labor, resulting in an adjustment, prior to dates covered by this claim, as previously explained in this submission, and coincident with this, instructions were released that the responsibility for the operation and maintenance of the coal chutes would not be attached to the employes identified as coal chute laborers, nor would any supervisory or clerical duties be required of the incumbents of those positions; such supervisory, clerical duties, and responsibilities thereafter to be handled by the section foreman, thereby warranting the change in classification and rate of pay to coal chute laborer."

OPINION OF BOARD: Carrier maintains at Hettinger, North Dakota and Mildred, Montana, mechanical, gas engine operated coal chutes. The employes designated to operate the machinery at these coal chutes were

classified as coal chute foremen and paid as such at the rate of \$110.10 per month. They were also required to make certain reports and perform certain other supervisory duties when necessary.

In the early part of 1936, due to the falling off in business and consequent reduction in the number of employes working at these points, these coal chute foremen were relieved of all supervisory duties, their respective positions as coal chute foreman abolished and the position of coal chute laborer established with a substantial reduction in pay. These employes continued to operate the coal chute machinery as theretofore, the only difference in duties being that they were no longer required to make certain reports and perform certain other supervisory duties when necessary. These duties were turned over to the section foreman and telegraph operator at each of the points in question.

The prevailing agreement establishes seniority rights by sub-departments in the maintenance of way department. The section foreman and coal chute employes are in different sub-departments and the telegrapher is, of course, not covered by the agreement. Employes contend that the action of carrier in removing the supervisory work from the sub-department, to which coal chute employes belong, to employes outside the agreement and outside that sub-department violated the scope rule of the agreement and removed work from one seniority district to another in violation of the agreement. Employes also question the right of carrier to reduce the pay of these employes while still requiring them to operate the coal chute machinery which is the major duty of a coal chute foreman.

In the opinion of the Board the latter and more important question is decisive of this dispute and it is unnecessary to consider the other questions raised.

The record clearly shows that the principal duties of a coal chute foreman are to operate the coal chute machinery and to keep a sufficient supply of coal in the coal chute. The making of reports and such other supervisory duties as were performed by these employes were merely incidental to their major duties and as long as these major duties adhere to the work performed there can be no change in the rates of pay except as authorized by Rule 5-(p) of the agreement.

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 carrier violated the agreement when it abolished the two positions of coal chute foreman at the two points in question.

AWARD

Claims sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 20th day of June, 1939.