

Award No. 1116

Docket No. MW-1016

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

I. L. Sharfman, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

CENTRAL OF GEORGIA RAILWAY

H. D. Pollard, Receiver

STATEMENT OF CLAIM: "Claim of Committee of Employees that the operation of the new coal chute at Industry, Ga. comes within the scope of current agreement between the Carrier and the Brotherhood of Maintenance of Way Employees, that the position of coal chute foremen to be employed in the operation of that coal chute be bulletined to employees coming within the scope of the Maintenance of Way agreement eligible to such position at the rate of \$150.20 per month."

EMPLOYEES' STATEMENT OF FACTS: "On or about June 1st, 1939, the Carrier started operation of a new coal chute erected at Industry, Ga., Industry being a suburb of Atlanta, Ga., where the Carrier's freight yards are located. Employees operating coal chutes come within the scope of and are governed by current agreement between the Carrier and the Brotherhood of Maintenance of Way Employees. However, instead of bulletining the position of a coal chute foreman for assignment to the new coal chute at Industry, to eligible employees coming within the scope of the Maintenance of Way Agreement, the Carrier assigned the operation of the new coal chute at Industry to the employees in the Mechanical Department.

"An agreement bearing date of January 1, 1937 is in effect between the parties, which by reference, is made a part of this Statement of Facts."

POSITION OF EMPLOYEES: "Rule 2 of agreement in effect between the Carrier and this Brotherhood reads:

"Rule 2. Seniority rights of all employees will be confined to the sub-departments in which employed. Sub-departments are defined as follows:

1. Track
2. Bridge and Building
3. Plumbing
4. Rail Welding
5. Pumpers
6. Coal Chutes
7. Roadway Machines
8. Timber Treating'

"The above rule makes it very clear that employees assigned to the operation of coal chutes come within the scope of the Maintenance of Way Agreement and further, that the coal chutes constitute a sub-department in the Maintenance of Way Department.

OPINION OF BOARD: The coal chutes which are subject to the Agreement of January 1, 1937 are expressly specified in that Agreement, and those enumerated in Rule 36, together with the rates of pay attaching to the positions, do not include the coal chute at Industry which had existed there for many years prior to the negotiation of the Agreement. The fact that a modern mechanical chute was established there on June 1, 1939, in place of the rather primitive coaling station located at this point theretofore, may provide grounds for negotiating the position into the Agreement, but it does not provide an adequate basis for a holding by this Board, as requested in the claim, that the new coal chute is subject to the Agreement, and that a coal chute foreman must be employed there at the rate specified in the claim. Such a holding would create a new agreement rather than interpret and apply the existing Agreement. Rule 1, Scope, as particularized by Rule 36, Rates of Pay, does not embrace all coal chutes; and the mention of coal chutes in Rule 2, Seniority, is merely designed to constitute such coal chutes as are subject to the Agreement one of the sub-departments to which the seniority rights of those employed therein will be confined. Under these circumstances the objective of the employees can be achieved only through the process of negotiation.

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 employee involved in this dispute are respectively carrier and employee 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 evidence of record does not disclose any violation of the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 14th day of June, 1940.