

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Ernest M. Tipton, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
MISSOURI PACIFIC LINES

STATEMENT OF CLAIM: "Claim of Boyd Austin, water service employe at Taylor, Texas for the difference in water service helper's rate and water service repairman's rate for service performed subsequent to June 2, 1939 on account of the class of work performed by him being of the same class as that ordinarily classed and paid for at the water service repairman's rate, and for which class of work he claims he should be paid the water service repairman's rate under the provisions of Rule 28 of the Agreement dated August 1, 1938 between the Missouri Pacific Lines and its employes represented by the Brotherhood of Maintenance of Way Employees."

EMPLOYES' STATEMENT OF FACTS: "Boyd Austin, classified and paid as water service helper, is assigned to the district from New Braunfels, Texas to Palestine, Texas, including the Georgetown Branch, the district comprising approximately 238 miles. In this assignment he performs the mechanical work in connection with the maintenance and repairs of all water service facilities such as installation and repairs of pumps, standpipes, pipelines, plumbing, etc."

POSITION OF EMPLOYES: "As stated in the Employees' Statement of Facts, Boyd Austin performs mechanical work in connection with installation, maintenance and repairs of all water service facilities on the district to which he is assigned. In fact, he performs the same class of service as employes classified as water service repairmen on other divisions of the Missouri Pacific Railroad."

"In the performance of his duties in the maintenance and repair of all water service facilities where the work is so heavy that he cannot take care of it himself, he is authorized and directed to call for help in connection with digging, handling of heavy material, etc. Briefly, and as stated, the services and the conditions under which the service is rendered by Boyd Austin is exactly the same as that applicable to any other water service repairman on the Railroad."

"The Carrier maintains a supervisory employe classified as 'Fuel and Water Service Supervisor' who is stationed at San Antonio, Texas, and who has jurisdiction over the entire International & Great Northern part of the Missouri Pacific Lines. This supervisory employe as a rule does not perform actual mechanical work, but as his title indicates, has general supervision over fuel and water service facilities."

"The rate of pay for water service repairmen on the Gulf Coast Lines part of the Missouri Pacific Lines is \$182.67. Through an oversight by the employes' committee no rate was entered into the schedule applicable to

service repairmen was established in the agreement effective March 1st, 1928, by reason of the fact that those employees were overlooked. At the same time your Honorable Board's attention is called to the fact that the agreement effective August 1st, 1938, does not list rate of pay applicable thereto for water service repairmen insofar as the I.-G. N. is concerned.

"In handling the present case with the General Chairman of the Maintenance of Way Organization, Mr. David's letter to Mr. Blackburn, April 15th, 1935, heretofore quoted, has been referred to and the Carrier's object in advising your Honorable Board of the change of classification of fuel and water service supervisor to that of assistant water service foreman in March 1932 and the change back to the original classification June 1, 1937 was for the purpose of preventing confusion on the part of the Board with respect to the verbiage as contained in Mr. David's letter referred to above.

"Fuel and water service supervisors at this time perform repairs in addition to their supervision, the same as they did when they were classified as assistant water service foremen and, therefore, the establishment of a rate for assistant water service foremen on the I.-G. N. in 1932 did not establish a rate for water service repairmen or have any bearing in connection with the service which was at that time and still is being performed by water service helpers.

"At the time the agreement of August 1st, 1938 was entered into, the employees who were classified as assistant water service foremen, 1932 to 1937, had the title of fuel and water service supervisors and were listed in the agreement as such together with water service helpers and as stated in Mr. Blackburn's letter of April 11th, 1935, heretofore quoted, the agreement does not have a rate of pay listed for water service repairmen, neither does it list a rate of pay for assistant water service foremen. Therefore, insofar as the I.-G. N. Railroad is concerned there is no agreement with the Organization to classify or rate employees in the water service department as water service repairmen, the only employees being covered by the agreement are the ones as listed under the titles of fuel and water service supervisors and water service helpers.

"It is the contention of the Carrier that the purpose of this claim as has been presented by the Organization is to secure from your Honorable Board an award which would have the effect of establishing a position and rate of pay which is not now covered by the agreement insofar as the I.-G. N. Railroad is concerned. Although in 1935 the General Chairman took the position that it was through an oversight that the position of water service repairman was not included in the agreement, at the same time when the agreement was revised and made effective as of August 1st, 1938, such employees were not included. The Carrier, therefore, respectfully petitions your Honorable Board to refuse jurisdiction with respect to this case, contending that award sustaining the contention of the employees would have the effect of writing into the present agreement a position which was not included therein at the time the present agreement was revised and placed into effect, which the Carrier understands is without the province of your Honorable Board."

OPINION OF BOARD: The claim in this case deals with the right of the Carrier to require an employe, Boyd Austin, paid as a water service helper, to perform and be responsible for water service repairman's work.

The Carrier operates two lines of road in the State of Texas, one the Gulf Coast Lines, and the other the International-Great Northern Railroad Company. The claimant in this case worked on the International-Great Northern Railroad Company.

The effective date of the Agreement entered into between the Missouri Pacific Lines and the Brotherhood of Maintenance of Way Employes was August 1, 1938. The rules in this Agreement apply to employes on both the Gulf Coast Lines and the International-Great Northern Railroad Company,

but the wage schedule was listed separately, except a few that were listed jointly as is shown on page 28 of the Agreement. Water service employees were not so listed.

Briefly, the claim is that: "* * * Boyd Austin, water service employe at Taylor, Texas (be paid) for the difference in water service helper's rate and water service repairman's rate for service performed subsequent to June 2, 1939 on account of the class of work performed by him being of the same class as that ordinarily classed and paid for at the water service repairman's rate, * * *."

For the purposes of this case, it is admitted that the claimant did the same work as a water service repairman does on the Gulf Coast Lines subsequent to June 2, 1939. Or to put it another way, for the purposes of this case, had the claimant done the same work on the Division of the Gulf Coast Lines he would have been assigned as a Water Service Repairman and been paid as such; to wit—\$182.67 per month.

The Scope Rule and Rule 28 are relied upon by the claimant. The pertinent part of the Scope Rule reads:

"These rules govern the hours of service and working conditions of all employes herein named in the Maintenance of Way Department and sub-departments thereof (not including supervisory forces above the rank of foremen) as follows:

(a) Bridge and Building Department:

Foremen

Assistant Foremen

Water Service Foremen, Assistant Foremen, Repairmen, Helpers, Laborers and Pumpers.

Motor Car Repairmen and Helpers

Mechanics (carpenters and painters) helpers and laborers."

The wage schedule on the Gulf Coast Lines provides:

"Water Service Repairmen.....182.67 per month
Water Service Helpers.....128.97 per month"

while on the International-Great Northern Railroad Company it provides:

"Water Service Helpers.....128.97 per month"

Water Service Repairmen do not appear in this schedule.

This current Agreement contains not only the Scope Rule, but a wage schedule which is a list of positions and their rates of pay as fixed by the parties. Since the actual Scope of an agreement can be made as broad or as narrow as the parties stipulate, the positions listed in the wage schedule must be taken as the concrete expression of the carrier and its employes with respect to the effective Scope of the Agreement. This Board cannot make a new agreement for the parties so as to either include positions not covered thereby or exclude positions embraced therein. There is no such position as Water Service Repairman listed in the wage schedule of the International-Great Northern Railroad Company.

Rule 28 reads:

"An employe assigned to work on a higher rated position thirty (30) minutes or more, but less than one (1) hour, will be allowed the higher rate for the full hour, and thereafter will be paid the higher rate on the minute basis for the full time worked on the higher rated position."

This rule deals with an employe who is regularly assigned to one class of work and then is temporarily assigned to a higher class of work.

In the case before us, as previously stated, had the claimant been assigned to do the same class of work on the Gulf Coast Lines, he would have a regular assigned position as Water Service Repairman; no such position exists on the International-Great Northern Railroad Company. While it is apparent that inequities exist on the lines of the Carrier, there is nothing this Board can do about it. That is up to the parties.

It follows that the claim should 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 employe involved in this dispute are respectively carrier and employe 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 claim is denied.

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 November, 1940.