

Award No. 1251

Docket No. MW-1301

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Ernest M. Tipton, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

QUINCY, OMAHA & KANSAS CITY RAILROAD

(Now absorbed by the Chicago, Burlington & Quincy Railroad)

STATEMENT OF CLAIM: "Claim of J. W. Clements, bridge and building employe of the Quincy, Omaha and Kansas City Railroad:

"First: that the Carrier violated Rule 52-(g) of the current agreement by classifying and paying J. W. Clements as bridge and building laborer for services performed on various dates from May 2nd, 1939 to July 21st, 1939.

"Second: that J. W. Clements shall be paid the difference between what he earned at 43¢ per hour under the classification of bridge and building laborer, and what he should have received at 55¢ per hour under the classification of a bridge and building helper for nine hours per day on the following dates:

"May 2, 3, 4, 5, 9, 11, 12, 15, 17, 18, 19, 26 and 31, 1939.

"June 16, 20, 21, 22, 23, 24, 27, 28, 29 and 30, 1939.

"July 3, 5, 6, 11, 13, 17, 18, 19, 20 and 21, 1939."

EMPLOYEES' STATEMENT OF FACTS: "Rules 52 (f) and 52 (g) of Agreement in effect read:

'(f) An employe assigned to assist the respective mechanics outlined in the foregoing paragraphs of this rule will be classed as a Helper. Helpers will be required to provide only such mechanics' tools as may be necessary for them to learn the trade.'

'(g) An employe in the Bridge and Building Department regularly assigned to do work commonly recognized as laborer's work, such as excavating, back filling or similar pick-and-shovel work, loading and unloading materials will be classed as a Bridge and Building Laborer.'

At no time during the period involved was J. W. Clements regularly assigned to perform the class of service contemplated or specified in Rule 52 (g). On the other hand, during all of the time involved, he was working with the gang in which employed assisting mechanics in the miscellaneous work in which the gang was engaged."

POSITION OF EMPLOYEES: "As will be observed from Rule 52 (g) quoted in Employees' Statement of Facts, it provides that an employe regularly assigned to do work commonly recognized as laborer's, such as ex-

principles, and the language of the rule is susceptible to no other construction, the Management concludes its submission as follows:

"(1) The consist of Gang No. 1, of which J. W. Clements was a member, was predicated upon the character of service to be performed in each of the months involved in the claim;

"(2) the number of mechanics, helpers and laborers working in this gang was at no time inconsistent with the provisions of Rule 52, and at no time did the number of helpers and laborers exceed the number of mechanics working on the operating division;

"(3) therefore, all schedule provisions were complied with implicitly and the claim is not valid."

OPINION OF BOARD: This claim involves the construction of Rule 52. As that rule is set out in full in carrier's position, it will not be restated here.

The claimant relies upon subdivision (g) of this rule, which reads:

"An employe in the Bridge and Building Department regularly assigned to do work commonly **recognized** as laborer's work, **such as** excavating, back filling or similar pick-and-shovel work, loading and unloading materials will be classed as a Bridge and Building Laborer." (Emphasis ours.)

On the other hand, the carrier relies upon the last paragraph of subdivision (h) of the rule, which reads:

"It is recognized that work in Bridge and Building, * * * is of such nature that employes must work more or less as a unit and when the ratio herein provided is adhered to, it will not be construed as a violation of Rule 56 for lower rated employes to assist and work with higher rated employes on the work to be performed."

The Bridge and Building Gangs are governed by subdivision (a), which defines a Bridge and Building Mechanic; subdivision (f), which defines a "helper" as an employe assigned to assist the respective mechanics outlined in the foregoing paragraphs of this rule * * *; and subdivisions (g) and (h), already quoted. •

This rule must be construed as a whole; individual clauses and particular words must be considered in connection with the rest of the rule so that each paragraph, sentence, clause, phrase or word be given some meaning if possible. 13 Corpus Juris 525; Schott v. Cont. Auto Ins. Underwriters, 31 S. W. (2d) 7; Myers v. Union Electric Light & Power Co., 66 S. W. (2d) 565.

If this rule of construing written instruments were ignored, then, under the last paragraph of subdivision (h) of the rule in question, the carrier could, in all instances, use "laborers" to the exclusion of "helpers," because the gang would be working more or less as a unit. This would be true, even though the laborer was assisting a Bridge and Building Mechanic in doing mechanical work.

Giving effect to the above rule of construction, in defining subdivision (g) of this rule we must not lose sight of the word "regularly," and the phrase, "such as." "Regularly," when given its ordinary meaning, is synonymous with "constantly" or "uniformly," and the phrase, "such as" means "for example."

Therefore, the Board is of the opinion that an employe who is assigned to do work commonly recognized as laborer's work cannot, under the last paragraph of sub-division (h), be required to do work as a helper, and if required to assist a Bridge and Building Mechanic doing mechanical work,