

Award No. 1447
Docket No. MW-1505

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Thomas F. McAllister, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
CHICAGO, BURLINGTON AND QUINCY RAILROAD
COMPANY

STATEMENT OF CLAIM: "Claim of Employees' Committee:

"First: that the Carrier violated Rule 56 of the agreement in assigning section laborers of Sections 8, 9, 11, 12, and 14 of the Beardstown Division, to perform service in the Beardstown yards on June 1st, 2nd, 3rd, and 4th, 1940, at the rate of pay applicable for services performed on their home section.

"Second: that the section laborers on Sections 8, 9, 11, 12, and 14, performing services in the Beardstown yards on June 1st, 2nd, 3rd, and 4th, 1940, be paid the difference between what they received at 38 $\frac{3}{4}$ cents per hour and what they should have received at 43 cents per hour or the rate of pay applicable to section laborers performing services in the Beardstown yards."

EMPLOYES' STATEMENT OF FACTS: "On June 1st, 2nd, 3rd, and 4th, 1940, the following section crews of the Beardstown Division were assigned to assist the foreman of the Beardstown yard section in making repairs to track after a derailment.

Section No. 8, Concord	Section No. 9, Arenzville
Section No. 11, Frederick	Section No. 12, Astoria
Section No. 14, Frederick	

"Foreman T. Hammon in charge of the Beardstown yard section had charge of the repairs to be made on his own section. The foremen from the adjoining sections worked along with the members of their crew and performed practically the same services performed by the section laborers.

"The rate of pay applicable to section laborers as indicated in the Table of Rates of Pay is as follows:

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Beardstown and Centralia Yards	.43¢ per hour
Balance of Division	.38 $\frac{3}{4}$ ¢ per hour"

POSITION OF EMPLOYES: "The established rate of pay applicable to section laborers performing services on Section No. 10, Beardstown Yards, and Section No. 13, Centralia Yards, is 43 cents per hour, whereas, the established rate of pay applicable to section laborers performing services on all other sections on the Beardstown Division is 38 $\frac{3}{4}$ cents per hour.

Throwing the tail track over involved breaking rail connections in the main track and moving that end of track over to meet the end of the tail track, a procedure not uncommon in connection with regular work on 'line' sections.

"Attached as Exhibit No. 2 is sketch showing the territory involved, and the territories from which the various gangs were drawn.

"It will be noted that Rule 56 provides a higher rate of pay will apply when an employe is 'assigned * * * to a position paying a higher rate than the position to which regularly assigned * * *.' The individuals for whom claim is presented in this case were not assigned to the Beardstown yard section gang. In addition, the carrier desires to point out the arbitrary nature of this claim by calling specific attention of the Division to these facts: The claim utterly ignores the laborers, members of Section No. 1 at Concord, who performed service along with the other employes for whom claim is made; the claim ignores the fact that six foremen from 'line' sections carrying a lower monthly rate than the foreman of the Beardstown yard section worked within the limits of that section (see Committee's Statement of Claim). In other words, it would seem the Committee contends that of twenty-three men from 'line' sections working within the limits of this 'yard' section, fourteen of them are entitled to a higher rate of pay therefor, and nine of them are not. The Carrier has previously called this fact to the attention of the Committee (see Exhibit No. 1), to which no response was made. Instead, the only reply forthcoming was Committee's letter of October 11, 1940 (see Exhibit No. 3), to which the carrier replied on October 15, 1940 (see Exhibit No. 4).

"In summation of its position the Management asserts:

"(1) The provisions of Rule 56 are not applicable to the point in issue because the claimants were not assigned to the Beardstown yard section;

"(2) The question of equity is not involved because the claimants were paid the agreed-to rates and in addition were provided with meals without expense to them;

"(3) The claim is tantamount to a request for change in rates without regard to due process specifically provided in the Railway Labor Act as amended and Memorandum of Agreement dated November 29, 1939 hereinbefore cited;

"(4) It is arbitrary and discriminatory because certain employes are chosen to be beneficiaries of the award sought to the exclusion of others who are subject to the same rules and who performed the same service, under the same circumstances.

"Therefore, the claim of the petitioner is entirely devoid of merit and should be denied."

OPINION OF BOARD: The determination of the question of whether section laborers of Sections 8, 9, 11, 12, and 14 of the Beardstown Division are entitled to rate of pay applicable to section laborers employed in the Beardstown yards, depends upon the construction given Rule 56, which provides:

"An employe temporarily assigned by proper authority to a position paying a higher rate than the position to which he is regularly assigned for four (4) hours or more in one day will be allowed the higher rate for the entire day. * * *."

The section laborers on whose behalf petition is filed, were assigned to work in the Beardstown yards to make repairs to a track which was damaged because of a derailment in the said yard. The work performed was of a temporary nature, caused by an emergency.

The case depends upon the decision as to whether such section laborers, temporarily working at the Beardstown yards, were entitled to the higher

rate which employes of the Beardstown yards were paid; and this in turn depends upon whether it can be said that such employes were assigned to a position paying a higher rate than the position to which they were regularly assigned.

It is our opinion that such employes were not temporarily assigned to new positions. Several gangs of section employes were called into the Beardstown yards, due to the emergency, and worked under their own foremen. Because such employes temporarily worked in the Beardstown yards, they cannot be said to have been assigned to the position of section laborers of the Beardstown yards. There is a distinction to be observed between being engaged in temporary work at a different location and temporarily assigned to a position. The petition 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 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 there was no violation of agreement by the Carrier.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 28th day of May, 1941.