

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Referee Bruce Blake

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

**CHICAGO, BURLINGTON & QUINCY RAILROAD
COMPANY**

STATEMENT OF CLAIM: "Claim of Section Laborers, Rex Wiley and W. T. Hillman, Creston Division, based upon the application of Schedule Rule 56, that they be paid Electrician Helper's rate of pay of 53 cents per hour in lieu of Section Laborer's rate of pay, i. e. 43 cents per hour, for services performed on June 11th, 17th, 18th, 19th, and 20th, 1940."

EMPLOYES' STATEMENT OF FACTS: "Section Laborers Rex Wiley and W. T. Hillman, Creston Division, were assigned by their Foreman to assist the electricians eight hours per day on June 11th, 17th, 18th, 19th, and 20th, 1940. Wiley and Hillman were paid at the section laborer's rate of 43 cents per hour for services performed while assisting the electricians on the above dates.

"The service performed by Wiley and Hillman on the dates above listed was strictly that of electrician's helpers, for they were assigned to assist an electrician. The prevailing rate for electrician's helper in this case was 53 cents per hour,—making a difference of 10 cents an hour between what they received at the rate of 43 cents per hour and that which they should have received; viz., 53 cents per hour, making a total due each of these employes of \$4.00."

POSITION OF EMPLOYES: "Rule 56 of the current agreement between the Brotherhood and the Carrier, effective June 1, 1938, reads as follows:

'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. Except in reduction of force, the rate of pay of an employe will not be reduced when temporarily assigned by proper authority to a lower rated position.'

"The Employes contend that the above rule provides that '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.' Wiley and Hillman were engaged for eight hours on each of the above dates in this class of work. Therefore, the provision of Rule 56 clearly provides that they will be allowed the higher rate.

"The language of Rule 56 cannot be construed to mean that the work performed by any employe must be work coming within the scope of the

agreement. But regardless of where the work was performed or within which agreement such work is classified, the rate is applicable to those who do perform such work.

"Rex Wiley and W. T. Hillman were assigned by proper authority and in assuming such assignment it was taken for granted by these employes that the provision of Rule 56 would apply for the time they were employed as electrician's helpers. These employes had no choice in accepting or rejecting the assignment. They obeyed the instruction of their superior; and we contend that the Carrier has violated the provision of the agreement in failing to apply the proper rate.

"A claim of identical nature has been satisfactorily settled with the Carrier and the Employes submit Exhibits No. 1 and No. 2 in support of their position that this claim should be settled on the same basis.

"The Employes wish to call the attention of the Board to its Award No. 1251, sustaining the claim of the Employes that it is a violation of the agreement to deny an employee who is assigned by the Carrier to perform helper's work, the rate of pay applicable to such classification."

CARRIER'S STATEMENT OF FACTS: "On the dates named in the claim, the claimant employes, Rex Wiley and W. T. Hillman, section laborers, Creston Division, Creston, Iowa, were used to perform laborers' work in connection with the laying of parkway cable, setting of poles, etc. The service made a basis of dispute consisted of digging a trench for the cable, digging post holes, tamping poles and other miscellaneous labor service in connection therewith, under the direction of a System Electrician. Their regular rate of pay as section laborers is 43 cents per hour. They are claiming the rate applicable to Traveling System Electrician Helpers, which is \$110.20 per month (not 53¢ per hour)."

POSITION OF CARRIER: "The petitioners in this case are relying upon the provisions of Rule 56 of current schedule agreement applying to maintenance of way employes, in support of this claim. The schedule agreement referred to is on file with the Third Division and therefore need not be submitted in evidence. It is the Management's contention that the service in question is correctly classified as laborers' work, that nothing but common labor was performed by the claimants, and therefore the claim is not valid."

OPINION OF BOARD: The claimants, Rex Wiley and W. T. Hillman, are Section Laborers whose rates of pay, as such, is 43 cents per hour. For June 11th, 17th, 18th, 19th, and 20th, 1940, they claim that they are entitled to pay at the rate of 53 cents per hour as Electrician Helpers. On those days they were working under the direction of a System Electrician in connection with the laying of parkway cable, setting poles, etc.

Electrical work comes under the jurisdiction of the Electrical Workers' Organization, which has an agreement with the Carrier containing the following:

Rule 1 (Classification of Work)

"(a) System Electrician's work shall consist of installing and repairing, inspecting and maintaining generators, light and power switchboards, motors, rheostats, control equipment, rotary converters, fire alarm equipment, motor generators, electric wiring, lights, underground cables, outside lines, transformers, and substation equipment.

"(b) Helpers assisting system electricians shall perform such part of the work as may be assigned to them, to the end that they may be kept fully occupied." (Emphasis added.)

It does not appear from the record that the agreement contains a classification of "Laborers." So, it is not only a fair but an irresistible inference that had "Helpers" been assigned to the job, they would have been required

to do the same character of work as was performed by Wiley and Hillman. Regardless of the character of work performed, they were, under the express terms of the above quoted rule, performing duties of "Helpers, assisting system electricians." They were assigned to the position of and acting in the place of Helpers and are, therefore, entitled to be compensated on the basis of Helper's pay under Rule 56 of the agreement between the Carrier and the Brotherhood of Maintenance of Way Employees, effective June 1, 1938. The pertinent portion of that rule 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. . . ."

This interpretation of the rule in question is fully sustained by the ruling of the Board in Award 674. Furthermore, there is evidence before the Board that the Carrier itself has recognized this to be a correct application of the rules in question. It recognized and paid, at Electrician Helper's rate, a claim of Section Laborer Peter Jacobs for work, of what appears to be of like kind and character, rendered under similar circumstances. Furthermore, the Carrier has discontinued the practice of assigning Section Laborers to the work of "assisting system electricians."

The Carrier raises the point that "Helpers assisting system electricians" are paid at the rate of \$110.20 for all services rendered and contends that this "is not subject to being broken down to a rate of 53¢ per hour for service performed." It would seem to be a sufficient answer to this contention that the Carrier did, in the case of Peter Jacobs, break down the monthly wage to an hourly basis.

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 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 has violated the agreement by its failure to pay claimants at the rate provided for "Helpers to system electricians."

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 19th day of November, 1941.