

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Richard F. Mitchell, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY**

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood involving Section Laborers J. Vernitte and L. Ledesma, St. Louis Terminal.

First; that J. Vernitte be paid the difference between what he received as a section laborer and what he would have earned as a steam fitter helper at 57 cents per hour under the application of Schedule Rule 56 while assigned to assist steam fitters on September 4th, 5th, 6th, 7th, 9th, 10th, 11th, 13th, 16th, 17th, 18th, 19th, 20th, 23rd, 24th, 1940.

Second; that L. Ledesma be paid the difference between what he received as a section laborer and what he would have earned as a steam fitter helper at 57 cents per hour under the application of Schedule Rule 56 while assigned to assist steam fitters on September 5th, 1940."

EMPLOYES' STATEMENT OF FACTS: "The claimants J. Vernitte and L. Ledesma were regularly assigned as section laborers in the St. Louis Terminal. The rate of pay of section laborers in this terminal is 43 cents per hour.

"Section Laborers, L. Ledesma, and J. Vernitte, were properly assigned by their foreman to assist the steam fitters on the various dates in September 1940. On the dates in question the section laborers were assigned to assist the steam fitters and performed such work as: operating air hammer to remove boiler scale, cleaning water tanks on interior, digging ditches for the purpose of uncovering water mains in the process of repairing same. After the water mains had been repaired, the section laborers then back-filled the ditches. The section laborers worked under the direction of the steam fitters and performed each and every service assigned to them regardless of the character of the work.

"The rate of pay applicable to steam fitter helpers is 57 cents per hour."

POSITION OF EMPLOYES: "Rule 56 of the agreement provides:

'Rule 56. 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.'

"In the past steam fitters and their helpers were not governed by schedule rules. There was however, an existing, recognized, rate of pay of 57 cents per hour for steam fitter helper. This rate applied when the employe was

"In regard to the claim alleged to have been filed by Laborer L. Ledesma under the provisions of Rule 56, which read:

'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.'

This man was assigned to work from 7:45 A. M. to 12:00 Noon—one hour lunch period—and from 1:00 P. M. to 3:45 P. M. He worked his assigned hours and by his own admission (see Exhibit (C)) he only worked three hours and 45 minutes with the steamfitting gang. Therefore, the provisions of Rule 56 are not applicable in his case."

POSITION OF CARRIER: "The service involved in this claim was characteristic of the duties usually performed by a common laborer. The use of tools was not required and at no time during the period therein concerned was service performed which required skill or training. Statements to the contrary must be supported by evidence. No such evidence has at any time been presented to the carrier, either with respect to time consumed or character of service. As a matter of fact, the data supplied by the carrier and submitted here in evidence, in the form of statements made by one of the claimants and the Local Chairman who instituted the claim, show clearly that the claim as submitted to the Third Division is erroneously prepared. The carrier wishes to be placed on record as sincerely regretting the capricious submitting of claims for adjudication with apparently little or no effort expended in an endeavor to present a true recitation of the circumstances. This should not be and such handling is in direct contravention of the provisions of Section 2, First, of the Railway Labor Act, as amended.

"The manifest laxity in that respect places the defendant carrier in a most unfortunate predicament; it is required to defend a charge, knowing not what it is charged with. Unquestionably if this case was pending in a court of law, the petitioner would be required to clearly state the charge and the carrier would file its answer thereto. Such procedure, resting in justice and common sense, and evolved through the centuries in the development of our laws, cannot be disregarded.

"Lacking definite knowledge as to the basis for the claim, the carrier rests its submission upon its statement of facts and supporting data with respect to the service performed."

OPINION OF BOARD: It is the claim of the Employees that J. Vernitte and L. Ledesma were regularly assigned as section laborers in the St. Louis terminal; that the rate of pay of section laborers in that terminal was 43 cents per hour; that these two men were temporarily assigned by their foreman to assist the steam fitters on various dates in September 1940; and, that the work which these men performed was the work which would have been performed by helpers had they been employed and is not the work performed by section laborers. The claim is predicated on Rule 56 of the current agreement. The Carrier contends that the services performed by these claimants was characteristic of the duties usually performed by common laborers. While there is a material dispute in regard to whether or not the work performed was that of a common laborer or helper, we do not find it necessary to pass upon that question.

The Employees admit that there was no agreement in effect covering steam fitters and helpers. An examination of the current agreement under which this claim is made shows that there was no agreement covering steam fitters or helpers and that there was no rate of pay fixed in the agreement for steam fitters' helpers. Under this agreement steam fitters' helpers not being included, and no rate of pay being fixed for steam fitters' helpers, it necessarily follows that the claim cannot be allowed.

The Employees cite the very recent award of this Board, No. 1600, rendered November 19, 1941, as authority for the allowance of this claim. The Referee has examined the file and Opinion in that case. In Award 1600 the agreement provided for helpers and it also listed a rate of pay for employees performing the class of work for which the claim was made, to wit, helpers assisting system electricians. We have no fault to find with Award 1600 and reaffirm same. However, it does not apply in this case for the reasons set out.

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 employees involved in this dispute are respectively carrier and employees 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 the current agreement as contended.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 18th day of December, 1941.