

Award No. 1665
Docket No. MW-1716

**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 that Bridge and Building employee, G. O. Hidy, System Gang, be paid bridge and building helper's rate of pay in lieu of laborer's rate for services performed on various dates from May 11th to the 25th, 1940."

EMPLOYES' STATEMENT OF FACTS: "The claimant G. O. Hidy, was employed as a bridge and building laborer in System Gang No. 4, under Foreman C. H. Anderson, from May 11th, to May, 25th, 1940. The classification of employes in System Gang No. 4 during May 1940, was as follows: One foreman, one assistant foreman, nine mechanics, two helpers and three laborers.

"System Gang No. 4 was assigned to make extensive repairs to the upper deck of the 'Hannibal Bridge' located at Kansas City, Missouri. This bridge is a double-deck bridge consisting mainly of steel spans carrying two railroad tracks on the lower level and a highway deck on the upper level. The program in connection with the repairs to the upper deck of this bridge required the removal of paving blocks, reinforcement planking and replacement of a great portion of the steel beams which had become deteriorated. The bridge end was also widened in order to correct a sharp angle which was hazardous to the traffic crossing the bridge.

"In order to complete the work program in connection with the necessary repairs to this bridge, System Gang No. 4 was required to work approximately four months on the project. The work of repairing the bridge began February 20th, 1940. The classification of employes assigned to System Gang No. 4 for a four month period is as follows:

February 1940

One foreman, one assistant foreman, 8 mechanics, 4 helpers, 3 laborers

March 1940

One foreman, one assistant foreman, 10 mechanics, 5 helpers, 5 laborers

April 1940

One foreman, one assistant foreman, 9 mechanics, 2 helpers, 3 laborers

May 1940

One foreman, one assistant foreman, 9 mechanics, 2 helpers, 3 laborers

"(5) The claimant G. O. Hidy performed the work of a Bridge and Building Helper during the period in question and should be paid helper's rate of pay on each of the dates regardless of the fact that he actually performed mechanic's work on various dates."

CARRIER'S STATEMENT OF FACTS: "As we understand this claim, it is for the following service alleged to have been performed by Mr. Hidy:

May 11—Heating asphalt tar.
 May 13—Heating asphalt tar.
 May 14—Heating asphalt tar.
 May 15—Heating asphalt tar.
 May 16—Heating asphalt tar.
 May 17—Laying and painting floor.
 May 20—Laying and painting floor.
 May 21—Heating asphalt tar.
 May 22—Heating asphalt tar.
 May 23—Nailing down planking.
 May 24—Nailing down planking.
 May 25—Nailing down planking."

POSITION OF CARRIER: "In conference, by reason of inability due to the elapsed time, to determine the amount and character of service performed by Mr. Hidy on May 17, 20, 23, 24, 25, the Management offered to allow him the helper's rate for those five days, so that the only dispute involved in this claim is whether heating asphalt during a portion of each of the other seven days cited entitles him to helper's rate for those days.

"Mr. Hidy's duties, while occupied in heating asphalt, consisted in drawing cold tar cement from a barrel into a bucket, pouring it in the tar kettle, build a fire in the firebox below and let the tar come about to a boil, exactly the same as heating water; checking the fire when necessary; and drawing the hot tar cement out of the kettle into a bucket when called for. Approximately 10 to 12 buckets of asphalt were used in any one of the seven days.

"Heating the asphalt required no skill whatever and is in no way part of the duties of a mechanic or helper. It is strictly laborer's work, the same as a laborer carrying a plank to be put in place by a bridge carpenter, or, as in the example cited by Referee Tipton in Award No. 1251, 'Removing drift would be the work of a laborer, while helping a mechanic doing mechanical work in repairing a depot would be the work of a helper.'

"In the claim now before the Board Mr. Hidy merely delivered the asphalt to the mechanic, who spread and applied it, without any assistance whatever from Hidy."

OPINION OF BOARD: Claimant G. O. Hidy, was employed as a bridge and building laborer in System Gang No. 4, under Foreman C. H. Anderson, from May 11th, to May 25th, 1940. The classification of employes in System Gang No. 4 during May 1940, was as follows: One foreman, one assistant foreman, nine mechanics, two helpers and three laborers.

System Gang No. 4 was assigned to make extensive repairs to the upper deck of Hannibal Bridge located at Kansas City, Missouri. This bridge is a double-deck bridge consisting mainly of steel spans carrying two railroad tracks on the lower level and a highway deck on the upper level. The program in connection with the repairs to the upper deck of this bridge required the removal of paving blocks, reinforcement planking and replacement of a great portion of the steel beams which had become deteriorated. The bridge end was also widened in order to correct a sharp angle which was hazardous to the traffic crossing the bridge.

It is the claim of the Employes that Hidy while classified and paid as a bridge and building laborer at 43¢ per hour performed the work of a bridge and building helper during the period in question and therefore is entitled to be paid helper's rate of pay.

This dispute involves the construction of certain subsections of Rule 52 of the current agreement in effect June 1938.

"(a) An employe skilled in and assigned to the construction, repair or maintenance of buildings, bridges or other structures, in the Bridge and Building Department, will be classed as a Bridge and Building Mechanic."

"(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."

"(h) Bridge and Building Gangs will be composed of foremen, mechanics, helpers and laborers. The number of positions of mechanics, helpers and laborers assigned in each gang will be in proportion to the nature of the work to be done in the ensuing month, but in no case, on an Operating Division, will the number of helpers and laborers exceed the number of mechanics. Paint gangs shall have a ratio of one Painter to one Helper. Rail End Welding Gangs shall have a ratio of two Welders to one Helper. Frog Welding Gangs shall have a ratio of one Welder to one Helper."

It is recognized that work in Bridge and Building Paint and Welding Gangs is of such nature that employees 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 employees to assist and work with higher rated employees on the work to be performed.

It will be noted that in the second paragraph of Rule 52 (h), Rule 56 is referred to. It is 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."

Carrier first contends that the entire gang was engaged as a unit in the operation and that Rule 56 is not applicable in light of the provisions of the last paragraph of Rule 52 (h), above quoted. This very question was answered by this Board contrary to the view of the Carrier in Award 1251. We quote:

"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, he must be paid the helper's rate of pay. A laborer's work is not confined solely to doing 'excavating, back filling or similar pick-and-shovel work, loading and unloading materials,' because this phrase is preceded by the words, 'such as.' "

While the Carrier criticizes Award 1251, it has been cited with approval by Judge Blake in the recent award, No. 1601.

The sole remaining question is whether Hidy was, on the days in question, engaged in the work of a common laborer within the meaning of Rule 52 (g).

Carrier, in its submission, states that by reason of inability, due to the elapsed time, to determine the amount and character of service performed by Mr. Hidy on May 17, 20, 23, 24, 25, the Management offered to allow the helper's rate for these five days, leaving us only to determine whether or not he was entitled to helper's rate for the other days set out in the claim. While there is some dispute in the record in regard to the nature and manner of work he performed, this Board is of the opinion that a fair reading of the record convinces us that the work performed came within the scope of Rule 52 (f) defining "helper."

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 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 carrier violated the current agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 22nd day of December, 1941.