

Award No. 2715

Docket No. MW-2727

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Ernest M. Tipton, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
MISSOURI PACIFIC LINES**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that R. L. Williams, rail repairman's helper shall receive the difference between what he received at rail repairman's helper's rate of pay and that which he should have received at rail repairman's rate of pay on April 13, 1942, on which date he relieved the regular rail repairman, performing the services of a rail repairman.

EMPLOYEES' STATEMENT OF FACTS: On April 13, 1942 the regular rail repairman T. L. Cain laid off on account of sickness. Rail repairman helper R. L. Williams worked in place of the regular rail repairman on that day, performing the work of the regular rail repairman.

The agreement in effect between the Carrier and the Brotherhood is by reference made a part of this Statement of Facts.

POSITION OF EMPLOYEES: Rule 28 of Agreement between the Carrier and the Brotherhood reads:

"RULE 28. An employe assigned to work on a higher rated position thirty (30) minutes or more, but less than one (1) hour, will be allowed the higher rate for the full hour, and thereafter will be paid the higher rate on the minute basis for the full time worked on the higher rated position."

As stated in Employees' Statement of Facts, on April 13, 1942 the regular rail repairman T. L. Cain laid off on account of sickness. Rail repairman helper R. L. Williams was assigned to take the place of the regular rail repairman and performed the work that the regular rail repairman would have performed had he been on duty on that day.

Rule 28, above quoted, very specifically provides that where an employe is assigned to a higher rated position he will be paid the rate applicable to such higher rated position. It must, therefore, be very clear that since rail repairman helper R. L. Williams was assigned and performed the work of a rail repairman on April 13, 1942 he is entitled to the rate applicable to a rail repairman on that day. We are sustained in that our position by numerous awards emanating from this Board.

We therefore maintain that the claim is just and reasonable and respectfully request that it be allowed.

CARRIER'S STATEMENT OF FACTS: On April 13 and 14, 1942 Mr. T. L. Cain was employed in the Maintenance of Way Department as Rail Repairman on the Houston Terminal, rate 87¢ per hour, and Mr. R. L. Williams was employed with Mr. Cain as Rail Repairman Helper, rate 69¢ per hour.

My investigation of this case develops the fact that on April 13 and 14, 1942 Mr. Williams worked as Rail Repairer Helper, performing the same service each date. On April 14, Rail Repairman Cain was on hand at the job, but on April 13, he was not present. On both of these dates a section laborer was used to handle the tie plates from the stock pile to the point where they were being worked on by the Rail Repairman and Helper. He did not perform service as a Helper on either date.

Mr. Williams did not take over or perform any of the Rail Repairman's work on either the 13th or the 14th. He performed service as a Rail Repairer's Helper and was paid the Rail Repairer's Helper's rates. I do not consider there is any basis for your contention that he should be paid the Rail Repairman's rate. Mr. Lamb's decision of April 19 is affirmed and the claim declined.

Yours truly,

(Signed) H. E. Roll."

POSITION OF CARRIER: The claim presented in favor of Rail Repairman Helper Williams for compensation at Rail Repairman's rate of pay on April 13, 1942 is without basis under the provisions of Rule 28 of Agreement between the Carrier and the Brotherhood of Maintenance of Way Employees for the following reasons:

1. Rule 28 of the Agreement provides that "An employee assigned to work on a higher rated position * * * will be allowed the higher rate * * *."

2. The Carrier has shown that the work performed by Helper Williams on both April 13 and 14, 1942 was work generally recognized as Helper's work, and that fact has not been disputed by the Employees.

3. The Employees conceded that Helper Williams performed the same work on both dates, and originally presented claim for both dates, subsequently withdrawing claim for April 14, due to the fact, as stated by the Assistant General Chairman, that the claim is not based on the character of work performed, but because the work performed on the 13th was without the presence of the Rail Repairman, while on the 14th the Rail Repairman was present.

4. The fact that the Employees concede that Helper Williams performed the same work on both dates, all of which was work regularly performed by Rail Repairman Helpers, and make claim for only April 13th, based only on the position that on that date the Rail Repairman was not present and Helper Williams performed the work by himself, is conclusive evidence that Helper Williams did not perform work of a higher rated position (Rail Repairman work) and, therefore, the claim is without foundation under the provisions of Rule 28 of the Agreement, the rule on which the Employees base this claim.

When consideration is given to all the facts in this case, together with the provisions of Rule 28 of the Agreement, the contention of the Employees and basis of claim as set forth in their several communications to the Carrier quoted in Carrier's Statement of Facts, it is clearly evident that the claim is without basis under agreement rules. Therefore, it is the position of the Carrier that the contention of the Employees should be dismissed and the claim accordingly denied.

OPINION OF BOARD: On June 13, 1942, T. C. Cain, the regular rail repairman, did not work because of being ill. His helper, the claimant, worked alone that day "elongating tie plates." The next day the regular rail repairman returned, and the claimant on that day did the same work. The claim is that the helper should have been paid at rail repairman's rate of pay for June 13, 1942, under Rule 28.

Webster's New International Dictionary defines the word "helper" as follows: "One who serves as help; an assistant; specif., a relatively unskilled worker associated with another to assist, esp. by manual labor."

A helper as such cannot work alone. Working alone, he would not be "associated with another to assist."

The rules do not define the duties of a repairman or his helper. While working June 13, 1942, the claimant had the responsibilities of the repairman and, therefore, the claim should be sustained.

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 employee involved in this dispute are respectively carrier and employee 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 violated the current agreement as contended by the petitioner.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 7th day of December, 1944.

DISSENT TO AWARD 2715—DOCKET MW-2727

We disagree with the purely legalistic basis used in resolution of this claim which through dictionary definition of the word "helper" concludes, "A helper as such cannot work alone," and thus undertakes to deprive the occupant of such a position of the right to employment and service as such on the days that the craftsman, or other employee with whom he is associated, is absent from service.

Common knowledge of the duties ordinarily a part of a helper's work and discerning recognition of the dictionary definition presented in the Opinion do not warrant narrowing of that part of the definition "associated with another to assist," to mean solely in the presence of the one whom he helps.

It is a wholly inconsistent conclusion not susceptible of practical application, which presumes that in the absence of instructions or assignment of a helper to the assumption of craftsman's responsibilities that he must per se be assuming such responsibilities if working at a time the craftsman is not working or in other than the craftsman's presence.

C. P. Dugan
C. C. Cook
A. H. Jones
R. H. Allison
R. F. Ray