

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Adolph E. Wenke, Referee**

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES**

**SOUTHERN RAILWAY COMPANY**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood:

(1) That the Carrier violated the Agreement by cutting off Engine Watchmen Clinton Huff and Henry Cansler from their regular positions at Cleveland, Tennessee, on March 26, 1948, and assigning the duties of such positions to Coal Chute Laborers:

(2) That Claimants Clinton Huff and Henry Cansler be compensated for eight (8) hours' pay at their regular rates for each day they were not allowed to fill their assignments while the Coal Chute Laborers performed the work of watching engines.

**EMPLOYES' STATEMENT OF FACTS:** Prior to March 26, 1948 there were two regularly assigned engine watchmen and one extra engine watchman assigned at Cleveland, Tennessee to watch engines camping at this point.

On or about March 26, 1948 the engine watchmen's positions were abolished and the work of watching engines was assigned to coal chute employes. Clinton Huff and Henry Cansler were the regularly assigned engine watchmen at this point prior to March 26, 1948.

One-half mile from the engine pit is the mechanical coal chute, at which point the Carrier had employed three laborers for the purpose of operating this mechanical coal chute. These three B&B coal chute employes referred to were instructed by the Carrier that commencing on March 26, 1948 they were assigned to the additional duties of watching engines at this point. The position of engine watchman is in the Track Sub-department and the position of coal chute laborer is in the Coal Chute and Cinder Pit Sub-department.

Since March 26, 1948, during the period that the Carrier assigned to the coal chute operators the additional duties of engine watchman, these coal chute laborers had been unable to perform adequately both assignments, and as a result, an extra man had often been called to assist these coal chute laborers.

Instructions were issued by Trainmaster Craig upon recommendation of B&B Supervisor Kits that such an extra man be furnished four (4) hours per week to grease and oil the machinery at the coal chute. This referred to extra man worked considerably more than four (4) hours on occasions to assist these coal chute laborers in the performance of their new assignments.

5:10 A. M. to	5:20 A. M.	Coaling engine.
5:20 A. M. to	6:00 A. M.	Nothing.
6:00 A. M. to	6:30 A. M.	Knocking fire down on yard engine.
6:30 A. M. to	7:00 A. M.	Knocking fires down on Atlanta and Knoxville Division engines.

#### Summary

Coaling engines .....	40 min.
Pumping water (Using city water) .....	00 min.
Looking after treating plant .....	00 min.
Drying and putting up sand .....	35 min.
Watching and otherwise attending engines .....	4 hr. 00 min.
Turn city water on and off .....	10 min.

Thus, the third trick coal chute laborer actually performed service for 5 hours and 25 minutes out of his eight hour tour of duty.

It is, therefore, obvious that there is no justification whatsoever for the employment of any additional laborers to watch or attend engines at Cleveland, Tennessee. Nor has there been any violation of the Maintenance of Way Agreement in requiring laborers employed at the coal chute to perform the few remaining duties formerly performed by laborers designated as Engine Watchmen, and prior to the establishment of such positions, by a Hostler and Hostler Helper.

Regarding the claim for pay allegedly due the two claimants, it has been shown that under Rule 4, hereinabove quoted, they had a displacement right when their positions were abolished. If they elected not to exercise such right and lost time as a result thereof, they are certainly not entitled to pay for time lost. If they lost time, it was due solely to their electing not to exercise displacement rights accorded them under the agreement, or because of their qualifications, ability or seniority not being sufficient, all of which are matters over which respondent has no control or assumes no responsibility.

For all the reasons given, the claim should in all things be denied and respondent respectfully requests that the Board so decide.

(Exhibits not reproduced.)

**OPINION OF BOARD:** The System Committee of the Brotherhood contends Carrier violated their Agreement when, on March 26, 1948, it cut off Claimants, Engine Watchmen Clinton Huff and Henry Cansler, from their regular positions at Cleveland, Tennessee, and assigned the duties of their positions to Coal Chute Laborers. It asks that these Claimants be compensated at their regular rate of pay for each day they have not been allowed to fill their assignments by reason thereof.

Rule 3 of the parties' Agreement, effective August 1, 1947, provides in part as follows:

(a) "Except as otherwise provided, seniority begins at the time employes' pay starts, on last entrance into Company's service, in the sub-department in which employed."

(d) "The sub-departments and occupations therein shall be:

Track Sub-department:

Laborers	} Common Seniority as among these groups
Lamp Men	
Engine Watchmen	

\* \* \*

Coal Chute and Cinder Pit Sub-department:  
Laborers."

At the time the present Agreement became effective on August 1, 1947, there were two regularly assigned positions of Engine Watchmen at Cleve-

land, Tennessee. These positions came under the seniority group which includes laborers, lamp men and engine watchmen. See Rule 3 (d) herein set forth. On March 26, 1948 these positions were abolished and the work thereof assigned to and performed by Coal Chute Laborers, a group of employees in a different seniority group. See Rule 3 (d) herein set forth.

While there appears to have been some decrease in the amount of work for the occupants of these abolished positions, however, the substantial part of their work remained and was assigned to and thereafter performed by Coal Chute Laborers. Apparently, the real reason which caused Carrier to make this change was the decrease in the amount of work at the coal chute.

It has often been decided by this Division, and a rule that is well settled, that a carrier, in discontinuing a position within the scope of the Agreement, may not assign the work to those outside the scope thereof nor is it permitted to assign it to those covered by the Agreement if they hold seniority rights exclusively in another seniority group or district.

The reason for this rule is that the employees within the seniority district or group have earned a senior right to perform it as long as it exists and to deprive them of that right is to defeat them of their seniority, which the Agreement secures and protects for them. Of course, this would not prevent such being done by proper negotiation and agreement.

For the reasons stated we find the claim to be justified and that it 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 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 Carrier violated the provisions of the Agreement.

#### AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: A. I. Tummon  
Acting Secretary

Dated at Chicago, Illinois, this 27th day of July, 1949.