

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Mortimer Stone, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
THE DELAWARE AND HUDSON RAILROAD CORPORATION

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

(1) That the Carrier violated the effective Agreement when it assigned Trackmen to perform Plumber Helper's work at Oneonta during the period February 15, to February 17, 1950, both dates inclusive, and failed to compensate the Trackmen so assigned at the Plumber Helper's rate of pay;

(2) That the Trackmen assigned to the work referred to in Part (1) of this claim, be allowed the difference between the amount received at the Trackmen's straight time rate of pay and what they should have received at the Plumber Helper's rate of pay.

EMPLOYEES' STATEMENT OF FACTS: The Carrier assigned Trackman Bailey and other trackmen to assist plumbers at Oneonta, New York, search for and repair a leak in the water main at the Oneonta Pump Station.

The trackmen above referred to, performed such assistance to plumbers by doing all necessary excavating on February 15, 16, and 17, 1950. The Carrier has declined to compensate the claimants at the plumber helper's rate of pay as requested by the Employees.

Rule 36(a) of the effective agreement carries a plumber helper's classification and the rate of pay attached to such positions.

The agreement in effect between the two parties to this dispute, dated November 15, 1943, and subsequent amendments and interpretations are by reference made a part of this Statement of Facts.

POSITION OF EMPLOYEES: Rule 18 of the effective agreement, which is herein controlling, reads as follows:

"Rule 18. Employees assigned to higher rated positions shall receive the higher rate while so engaged; if assigned to a lower rated position their rate will not be changed."

The Carrier is thoroughly familiar with the accepted interpretation of the above rule, but has based its denial of the claim upon the erroneous contention that excavation work in connection with repairs to a water line is not work generally recognized in the railroad industry as work of a plumber

or a plumber helper. Moreover, the Carrier contends that the only basis of determining whether or not certain work is properly that of a plumber helper, is whether or not such employees handle any material which is universally recognized as being exclusively that of a plumber.

The Carrier's interpretation is novel and unique, to say the least. It would be difficult, if not impossible, to consider excavation for repairs to a water line as anything but work of plumbers and their helpers. The sole purpose for excavation is to permit repairs to a water line, and the earth that must be excavated is as much a part of a plumber's material as is the pipe itself. The Carrier has so recognized that principle by assigning plumbers to perform the back-filling work after repairs to the water line were completed.

Notwithstanding the above, this Board has frequently enunciated the principle that it is the **purpose for which the work is being performed** which will determine the class of work being performed. In the instant case, there was no necessity whatsoever for any excavation except for the necessity of making repairs to a water line. These trackmen were helping the plumbers while excavating at the direction of the Carrier and they were, for all practical purposes, performing the work of a plumber helper. This Board held in Award 412, that:

"A helper, whether it be to a welder or to a carpenter, is one who helps. In other words, he is an assistant."

Many awards have issued from this Board relative to what classification of work is being performed when employees are assigned to excavate or backfill for the sole purpose of assisting other crafts or classes of employees, notably Awards 3638, 4077, 4553, 4757, 5161 and 5606, wherein it was held that:

"Award 3638—The cutting of trees and the cutting and trimming of underbrush is not the exclusive work of any class or craft of workmen. The method of determining to which class such work belongs is by an examination of the reason for the performance of the work. Here the work was performed at the behest of, under the direction of, and for the benefit of the telegraph department. Such being the case, the work is that of lineman helpers and should be compensated for at the rate of pay of lineman helpers under the composite rule."

"Award 4077—Whether certain types of work belong to Bridge and Building employees or some other craft, is dependent upon the purpose sought to be accomplished by it. If its purpose is to maintain a bridge by removing a hazard to its safe use, it is Bridge and Building work. If its purpose is to protect track and other facilities maintained by section employees, the work would belong to them. Under the evidence produced in this record, we think the purpose of the work was the maintenance and safety of the bridges. This makes it Bridge and Building work."

"Award 4553—While incident to the work performed by these men, since the ditches were dug either under or alongside of tracks, was the maintenance of the Carrier's right-of-way, however, the reason for doing the work and its primary purpose was that of maintaining the Carrier's water supply system, work which belongs to the Carrier's Water Service forces. In view thereof, since the rate claimed is the lowest paid Water Service forces, we find the Committee's position well taken and that the claim is meritorious. For similar holdings, see Awards 3638 and 4077 of this Division."

"Award 4757—There have been previous Awards of this Board which have dealt with similar factual situations, where Carrier had