

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
MISSOURI-KANSAS-TEXAS RAILROAD COMPANY
MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS**

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

(1) That the Carrier violated the agreement when it required B&B Helpers H. B. Toal and R. S. Edwards to perform work of a Mechanic's class and compensated them at the B&B Helper's rate of pay;

(2) That the Carrier further violated the agreement when it did not assign the Mechanic's work to B&B Helpers who were senior to the B&B Helpers cited in part (1) of this claim;

(3) That B&B Helpers H. B. Toal and R. S. Edwards be allowed the difference between what they were paid at the B&B Helper's rate of pay and what they should have received at the Mechanic's rate on April 30, 1951, and on subsequent dates thereto, because of the violation referred to in part (1) of this claim;

(4) That the two senior B&B Helpers who were entitled to this work by virtue of their seniority rights, be allowed compensation equal to that claimed in part (3) of this claim, because of the violation referred to in part (2) of this claim.

EMPLOYEES' STATEMENT OF FACTS: Messrs. H. B. Toal and R. S. Edwards are employed by the Carrier as Bridge and Building Mechanic Helpers, the duties of which contemplate helping Bridge and Building Mechanics in the performance of the work of their craft.

However, beginning on or about April 30, 1951, and on dates subsequent thereto, the two helpers referred to above were permitted to perform work requiring the skill of, and generally recognized as Bridge and Building Mechanic's work. Such work consisted in part of building and installing new window frames, install new flooring, build shipping crates, painting window casings, constructing trestling and other similar work which required the use of tools commonly used by Mechanics (Carpenters and Painters) and requiring a skill not contemplated in the Helper's class of employees. The work required fitting, framing, sawing, painting, fabrication, and in addition to the customary hand tools used by Mechanics, involved the use of shop power machinery, skil-saws and other similar tools.

The Third Division in Award No. 5619, with Referee Francis J. Robertson, in denying claim Carrier violated agreement in assigning work to employes without the scope of the Agreement, held, in part, as follows:

"* * * The scope rule of the instant agreement does not describe work as such. In accordance with numerous holdings of this Board recourse must be had to custom, tradition and practice to determine the work reserved to the classifications of employes listed in the Scope Rule. * * *"

Based on the facts and evidence as shown in this submission the claims of the Petitioner are without merit and agreement support and should be denied in their entirety.

The Carrier respectfully requests that the Board deny the claims.

Except as expressly admitted herein, the Carrier denies each and every, all and singular, the allegations of the Petitioner's claims, original submission and any and all subsequent pleadings.

All data submitted in support of Carrier's position as herein set forth have been heretofore submitted to the employes or their duly authorized representatives.

(Exhibits not reproduced).

OPINION OF BOARD: The claim here made by the System Committee of the Brotherhood in behalf of B&B Helpers H. B. Toal and R. S. Edwards is based on the contention that while these Claimants were assigned to the B&B Terminal Gang at Parsons, Kansas, they performed Mechanics' work but were not paid for doing such work in accordance with Article 15, Rule 1 of the parties' effective Agreement.

The Scope Rule of the parties' Agreement, Article 1, Rule 3, includes B&B Mechanics and Helpers but nowhere in the Agreement does it specifically provide what the duties of each shall be. Ordinarily a Helper's duties would be to aid and assist the person or persons he is helping to perform his or their work, which in this case would be the Mechanic or Mechanics with whom he is working. The extent to which he could render such aid and assistance on this Carrier, under the Agreement before us, would depend upon what had been the custom and practice in that regard when the Agreement was entered into. The burden, therefore, was on the Organization to show that what these Claimants did, on the dates set out in the record, was not work which Helpers had usually and customarily performed. In this regard the record shows the Claimants were, on all dates for which claim is made, working with a Mechanic or Mechanics.

There is no statement in the record by either of these Claimants as to just what work they did and how, what they did, differed, if it did, from what it had been customary for them to do. In fact two of the statements submitted by the Organization state it had been common practice for Helpers to perform the type of work for which claim is here made. We do not think the Organization has furnished a record permitting a sustaining award. If, by custom and practice, the Helpers on this Carrier are permitted to encroach upon what normally are duties of a Mechanic, the only relief therefrom is by a rule specifically defining the duties of each. Of course, Carrier cannot enlarge the scope of Helpers' duties and if it can be shown, as a matter of fact, that the duties now being performed are beyond those which it has been usual and customary for Helpers to perform, then a sustaining award would be in order. But that is not the factual situation presented by the record before us.

Since the claim in behalf of two senior B&B Helpers is premised on the claim in behalf of Toal and Edwards it, likewise, must be denied.

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 has not violated the Agreement.

AWARD

Claims (1), (2), (3) and (4) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 30th day of April, 1953.