

Award No. 7838

Docket No. MW-7751

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Lloyd H. Bailer, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

THE DELAWARE AND HUDSON RAILROAD CORPORATION

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

(1) The Carrier violated the effective Agreement when it assigned Trackmen Eugene Devins, D. R. Preston and Carlton Good to perform plumber helper's work at Plattsburg on July 30 and 31, 1953, and failed and refused to compensate them at the plumber helper's rate of pay for services so rendered.

(2) The Carrier further violated the Agreement when it assigned Trackmen instead of plumber helpers to perform plumber helper's work at Plattsburg on July 30 and 31, 1953.

(3) Trackmen Eugene Devins and Carlton Good be allowed the difference between what they were paid at Trackman's rate and what they should have been paid at plumber helper's rate for seven (7) hours each consumed in performing plumber helper's work on July 30, 1953.

(4) Trackmen Eugene Devins and D. R. Preston be allowed the difference between what they were paid at Trackman's rate and what they should have been paid at plumber helper's rate for eight (8) each consumed in performing plumber helper's work on July 31, 1953.

(5) Plumber Helpers Maurice Corbiere and Hubert Wells each be allowed fifteen (15) hours pay at their respective straight time rates because of the violation referred to in part (2) of this claim.

EMPLOYES' STATEMENT OF FACTS: On July 30, 1953, the Carrier assigned Trackmen Eugene Devins and Carlton Good to assist a Plumbing Force consisting of a Foreman, a Plumber and a Plumber Helper, in repairing a leak in a water main in Plattsburg Yard. Seven (7) hours time was consumed by each of these Trackmen in the performance of this work on July 30, 1953.

On July 31, 1953, the Carrier assigned Trackmen Eugene Devins and D. R. Preston to assist this Plumbing Force then consisting of a Foreman, two (2) Plumbers and two (2) Plumber Helpers, in repairing this same water

does not by wording nor necessary implication set aside this type of work as belonging to any particular classification of employees." (Parenthetical interpolation added)

The same rules and practices were involved in Award 4798, 6007 and 6053, and the denial awards were based on the long-established practice and the absence of rules supporting the claims.

The carrier denies that the trackmen involved in this claim performed other than trackmen's work on July 30 and 31, 1953, but if for some unknown reason it is found that they performed other than trackmen's work, then the carrier contends it cannot be found that they performed other than B&B laborers' work, which is performed under existing rules and practices in effect on this carrier by trackmen at the trackmen's rate of pay.

Management affirmatively states that all matters referred to in the foregoing have been discussed with the committee and made a part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: Some of the facts in this case are in dispute. The weight of the evidence indicates that the following occurred. On July 29, 1953 an underground water supply line in the Carrier's Plattsburg yard was found to have developed a leak at a point under the turntable track. On July 30 a Plumber Foreman, a Plumber, a Plumber Helper and two Trackmen were assigned to this repair project. On July 31 a Plumber Foreman, two Plumbers, two Plumber Helpers and two Trackmen completed the work involved. The Trackmen dug out and removed several ties, and spiked the switch. A Plumber and the Plumber Helpers performed digging to reach the faulty water pipe, and the pipe repair itself was performed exclusively by the plumbing force. The Trackmen threw back some of the dirt being thrown out by the Plumber employees, assisted in backfilling the trench after the repairs were made, and restored the track to its original condition. The Organization contends the Trackmen performed digging beyond that necessary to remove the ties, as well as other specified tasks to assist the plumbing force, but there is no substantial evidence on this point.

The substance of this claim is that the subject Trackmen were required to perform work customarily done by Plumbing Helpers since they were assisting the plumbing force in repairing a water line and worked under the supervision of a Plumber Foreman. The Organization contends the claimant Trackmen thus were entitled to the Plumber Helper rate under the composite service rule of the Agreement. The Carrier asserts the Claimants were properly engaged because they were used only to perform track work. It further contends that even if it were held that the disputed activity was not Trackmen's work, it cannot be found that it was other than B & B Laborer's work, which under the existing rules and practices is performed by Trackmen at the Laborer's rate of pay.

Numerous cases of this general character involving the application of the composite service rule have been decided by this Board. Among the criteria applied are the principal purpose for which the work was performed; whether the claimants worked as an integral part of the higher rated crew or whether divisible work was performed by two or more groups in their respective domains; and the extent and effect of past practice in assigning employees in this respect.

The total operation of repairing the water line in the subject case was clearly divisible into track work and plumbing work. The removal and re-installation of the ties, and the digging made necessary thereby, comprised work customarily performed by the track forces. Such work was essential to the general pipe repair operation, but this fact did not make it plumbing work. Had the Carrier assigned Plumber Helpers to this particular phase of the overall job, it would have exposed itself to a claim from the Trackmen.

The evidence of record leads us to the conclusion that any work which the claimant Trackmen may have performed other than that dealing with the ties was minimal in relation to their track work, or incidental thereto. Thus we are of the opinion and find that the Claimants did not perform the duties of Plumber Helpers, as the Organization contends. This finding makes it unnecessary to comment on the Carrier's argument that even if the disputed work were held not to be Trackmen's work it must be considered as Laborer's work in the B & B Department.

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 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 the Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois this 26th day of April, 1957.