Award No. 8816
Docket No. MW-8425

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Norris C. Bakke, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY

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

(1) The Carrier violated the effective Agreement when it assigned section laborers to perform the work of unloading coal at New London on October 12, 13, 18, 20, 21, 28, 29, November 2, 3, 5 and 8, 1954 instead of recalling furloughed Coal Chute Operator J. L. Brown to perform such work;

(2) Coal Chute Operator J. L. Brown be allowed four hours' pay at Coal Chute Operator's straight time rate for each of the dates listed in part (1) of this claim except for the date of November 8, 1954, for which he shall be allowed two hours' pay at Coal Chute Operator's straight time rate.

EMPLOYES' STATEMENT OF FACTS: Effective July 31, 1954, coal chute operator J. L. Brown was furloughed when the Carrier abolished his position at New London, Iowa.

On October 12, 13, 18, 20, 21, 28, 29, November 2, 3, 5 and 8, 1954 section laborers were assigned to perform the work of unloading coal at this point and consumed four (4) hours' time on each of the foregoing dates listed, except for November 8, 1954 when such employes worked two (2) hours.

Appropriate claim was filed in behalf of furloughed coal chute operator J. L. Brown. The Carrier has denied the claim.

The Agreement in effect between the two parties to this dispute dated September 1, 1949, together with supplements, amendments, and interpretations thereto are by reference made a part of this Statement of Facts.

POSITION OF EMPLOYES: The instant claim stems from the Carrier abolishing the claimant's position of coal chute operator on July 31, 1954 at New London, Iowa, and assigning the work of unloading coal at this point to section laborers, who hold no seniority rights in Group 7, Grade A, of Rule 2 (b) on the dates set forth in the Employes' Statement of Facts.

1. Rule 1, Scope, clearly excludes the disputed work from the agreement.

2. Claimant's right to be recalled to service is governed by Rules 10 and 11 only when forces are increased, and there was no increase in force on the dates specified in the claim.

3. Carrier is not required to establish more positions than are required by the exigencies of the service.

4. Petitioner has conceded through the years, both prior to and subsequent to the dates specified in the claim, that the action taken by Carrier in this case is fully supported by the agreement.

With these irrefutable facts before it, the Board must deny the claim.

* * * * *

The Carrier affirmatively asserts that all data herein and herewith submitted has previously been submitted to the Employes.

OPINION OF BOARD: The pertinent part of Rule 1 of the Scope Rule reads:

"* * * This agreement does not apply * * * to part-time positions for which amounts of fifty dollars ($50.00) per month or less are paid."

"(b) The expressions 'positions' and 'work' used in this agreement refer to service, duties, or operations necessary to be performed the specified number of days per week, and not to the work week of individual employes."

The claim shows that Claimant would have worked 28 hours during the month of October which figured at the rate of $1.35 an hour (rate given in the agreement) would amount to $37.80, and 14 hours for the month of November would be $18.90, both below the $50.00 a month minimum fixed by the above rule.

Carrier says it gave the work to "an" employe, a section laborer, while the Organization contends that it was given to the section forces (and the record does use that language too), but it would seem to be a one man operation, or else Claimant would have to show the actual man hours performed by the men who were doing his work and since Claimant did all the work by himself after November 9th it would appear to be a one man operation.

Carrier concedes that "claimant was the only employe on the seniority district holding seniority as a coal chute operator," and gave him the assignment when it was made a full time job on November 9th, but until that time it was "work" within rule 1(b) supra.

In all of the awards submitted to the referee in this case only one award involved coal chute operators, and in that award (4490) we sustained a claim of some engine watchmen for engine watching, work that had been taken away from them, and given to the coal chute operators because the work under the scope agreement belonged to the engine watchman, and the employes rely on the award here no doubt on the same theory that work

taken away from them under a similar segregation of work justifies the claim here in toto.

However, in Award 4490 there was no $50 limitation in the scope rule, nor does it appear in any of the other awards cited to us.

Our conclusion is that Carrier did not violate the Agreement and claim should be denied.

FINDINGS: The Third Division of the Adjustment Board, after giv- 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 Employe involved in this dispute are respectively carrier and employe 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 30th day of April, 1959.