

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Bruce Blake, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY**

STATEMENT OF CLAIM: "Claim of Equipment Operator D. J. Bowers, based upon the application of Schedule Rule 48 (b), asking that he be paid travel and waiting time at pro rata rate for 18½ hours while traveling from Lincoln, Nebraska to Galena Junction, Illinois on April 21st, and 22nd, 1940."

EMPLOYES' STATEMENT OF FACTS: "Operator D. J. Bowers, on April 20, 1940, was employed at the Havelock Shop, Havelock, Nebraska.

"The position to which Bowers was assigned at the Havelock Shop was not covered by the scope of the Maintenance of Way Employees' agreement, consequently Bowers was the same as unassigned in so far as his seniority as a Roadway Equipment Operator was concerned.

"On April 20, 1940, D. J. Bowers was instructed by W. H. Schaer, Superintendent of Roadway Equipment, Havelock, Nebraska, to report to Assistant Roadmaster R. B. Johns, in charge of System Steel Gang at Galena Junction, Illinois, to relieve Equipment Operator Fred Hunsaker who was called home on account of sickness.

"In compliance with instructions issued by Mr. W. H. Schaer, D. J. Bowers left Lincoln, Nebraska, on Train No. 6 at 7:00 A. M., April 21, and arrived at Galesburg, Illinois, at 4:20 P. M., April 21. He waited at Galesburg until 5:30 P. M. for the departure of Train No. 47. Train No. 47 arrived at Savanna, Illinois at 11:40 P. M. on April 21, 1940. Bowers was required to wait at Savanna until 1:02 A. M., April 22, for the departure of Train No. 47, which arrived at Galena Junction, Illinois, at 1:30 A. M. on April 22, 1940.

"On April 20 there were three Roadway Equipment Operators employed at the Havelock Shop who were senior to Bowers, all of whom held seniority on the Roadway Equipment Operators' roster, but who were not employed on positions on April 20 coming within the scope of the agreement with the Maintenance of Way Employees.

"Therefore, Bowers was traveling under instruction from the Management and not in the exercise of his seniority.

"Hence, the Employees contend that Bowers is entitled to have the provision of the agreement complied with, and that it is proper that Bowers be paid pro rata rate of 62 cents per hour for the eighteen and one-half hours referred to herein, or a total of \$11.47 as compensation while traveling and waiting while making the trip from Lincoln, Nebraska to Galena Junction, Illinois."

A. M. on April 22 was consumed in traveling and waiting, and for this reason Bowers is entitled to be paid at the pro rata rate for eighteen and one-half hours.

"We further contend that the exception in Rule 48 (b) has no bearing upon this claim, by virtue of the fact that no opportunity was afforded Bowers for five hours sleep during the period from 7:00 A. M., April 21, to 1:30 A. M., April 22.

"Therefore, since Bowers was not traveling in the exercise of his seniority rights or for any other personal reason, the Carrier violated the provision of Rule 48 (b), in denying its provision to Bowers while he was traveling at the direction of the Management.

"The Employees therefore request that the provision of Rule 48 (b) be complied with and that Bowers be compensated at the pro rata rate for eighteen and one-half hours.

"The Employees offer Exhibit No. 3—letter from Staff Officer J. F. Mullen—as proof that this claim was denied by the Carrier."

CARRIER'S STATEMENT OF FACTS: "The claimant in this case, D. J. Bowers, is employed as a Work Equipment Machine Operator, which is defined in Rule 52 (b) as follows:

'An employe skilled in and assigned to the operation of a Roadway Equipment machine, and capable of making necessary running repairs on such machine, will be classed as a Work Equipment Machine Operator.'

His seniority date as such is May 1, 1937. In this respect seniority roster is attached herewith as Management's Exhibit No. 1, and by such reference is made a part hereof.

"At the close of the maintenance season, the claimant employe was relieved from service account reduction in force, on August 29, 1939. At that time he was employed as helper on a dragline. There being no place where his seniority would permit him to go in the work equipment department, he was temporarily employed on September 11, 1939 as a laborer in the Stores Department, for which the Clerks' organization is the bargaining agency for purposes of the Railway Labor Act.

"On December 6, 1939, a position in the Mechanical Shops at Havelock, Nebraska became open, which paid a greater salary than that of laborer in the Stores Department. Therefore, the claimant was transferred temporarily to the Mechanical Department at Havelock, and he was thereafter performing service governed by schedule agreement with shop crafts employes. He continued in that capacity until the shops were closed on December 22nd, 1939. He was re-employed in the shops on April 10, 1940 and was there employed when a vacancy occurred at Galena Junction, to which he was entitled under seniority rules of the Maintenance of Way Agreement."

POSITION OF CARRIER: "The claimant employe traveled from Lincoln, Nebraska to Galena Junction, Illinois in exercise of seniority. Therefore, the provisions of Rule 48 (d), which read:

'Employes will not be allowed time while traveling in the exercise of seniority rights or between their home and designated assembling points, or for other personal reasons.'

are applicable, and in consequence the claim is not valid."

OPINION OF BOARD: The sole question presented is whether Bowers accepted the assignment at Galena Junction under orders in contemplation of Rule 48 (b) or in the exercise of his seniority rights in contemplation of Rule 48 (d).

The evidence overwhelmingly preponderates in support of the first alternative. The assignment is evidenced by the message dated April 20, 1940 from his superior, W. H. Schaer, addressed to P. F. Thomas, N. La Crosse, Wisc. and to R. B. Johns, Galena Jct., Ill. It reads as follows:

"Send Fred Hunsaker home at once acct wife very sick. This man on spikers Steel Gang. Am sending Bowers out of Gt on train 47 Sunday PM for Galena Jct, if other destination wire him care conductor. Bowers will run bolter, use other experienced men on spikers."

It is significant that opposite Schaer's name appears the name "Cy Bowers." Only one inference is deducible from this fact, i. e., a copy of the message was given Bowers to advise him of his assignment to take Hunsaker's place at Galena Junction. The message is mandatory in form and substance. There is nothing in it to suggest that the assignment was made in response to an exercise by Bowers of any seniority rights. In fact, as we view it, he had, under the circumstances, no seniority rights to exercise. There were four men including Bowers on the seniority roster available for the assignment. The other three were senior to Bowers. His name was at the bottom of the seniority roster. He had no seniority rights to assert over any other available man. He had no displacement rights. When the assignment came to him there was no alternative for him but to accept it. And there is nothing in the record to indicate that he was given any choice in the matter.

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 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 Bowers is entitled to pay in accordance with the provisions of Rule 48 (b) for 18½ hours traveling time in going from Lincoln (Havelock) to Galena Junction.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 25th day of November, 1941.