

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

NORTHERN PACIFIC RAILWAY COMPANY

STATEMENT OF CLAIM: Claim as presented by the System of the Brotherhood:

(1) That the Carrier violated the agreement by not assigning B&B Carpenter W. R. Collins and Alexander Foos, Tacoma Division, to work on Sundays, June 20 and 27, 1948;

(2) That the claimants each be reimbursed for eight (8) hours pay at the time and one-half rates of their respective positions for each of the dates mentioned, because of the Carrier's violation of the agreement.

EMPLOYES' STATEMENT OF FACTS: W. R. Collins, First Class Carpenter and Alexander Foos, Second Class Carpenter, Tacoma Division are both members of the B&B crew at Seattle, Washington.

The B&B crew at Seattle is under the supervision of B&B Foreman, O. W. Struebel.

The seniority of Collins and Foos is as follows:

W. R. Collins	Seniority Date
B&B Carpenter Helper	7- 7-13
B&B Carpenter Second Class	8-27-40
B&B Carpenter First Class	10-21-47
Alexander Foos	
B&B Carpenter Helper	2-17-47
B&B Carpenter Second Class	4-23-47

On Sundays, June 20 and 27, 1948, certain members of this Seattle B&B crew worked eight (8) hours each on each of these dates named on the crossing in connection with rehabilitating tracks to facilitate Great Northern detours.

Among those members of this Seattle B&B crew who performed this Sunday work referred to were First and Second Class Carpenter with less seniority in their class than Carpenters Collins and Foos.

Carpenters Collins and Foos were available for the performance of this work but were not called to service on these referred to dates.

B&B Foreman O. W. Struebel supervised the B&B work performed on Sundays, June 20 and 27, 1948.

The Carrier has shown that there is no rule of the current Maintenance of Way Agreement or understanding concerning the application of the rules of that agreement that provides for the performance of extra work on Sundays on a seniority basis and that it is the usual practice to have the senior available employees on a particular job handle the extra work attaching to such assignment on Sundays; that this practice was recognized by the Employees in 1941 as being proper; and that this is what was done in the case covered by this docket. The claim should be denied.

(Exhibits not reproduced)

OPINION OF BOARD: This claim arises out of work performed on Sundays, June 20 and 27, 1948, by members of the B&B crew at Seattle who were junior in service to the Claimants.

The Carrier maintains one B&B Department crew at Seattle. Seattle is in the Tacoma Division on which sixteen such crews are maintained. The B&B crew at Seattle was divided into two units or segments for the purpose of work. On June 4, 1948 one unit of this crew was assigned to renew ties on Bridge No. 4 in the Seattle Terminal. It continuously worked at doing so until October 7, 1948, when it completed the job. During this period the members of this unit worked on every week day and on one Sunday, August 1, 1948. Claimants, W. R. Collins, a B&B First Class Carpenter and Alexander Foos, a B&B Second Class Carpenter, members of this B&P crew, were assigned to and worked with this unit.

On June 17, 1948 another unit of this crew was assigned to perform crossing work in the Seattle Terminal in connection with rehabilitating tracks to facilitate detours through the Northern Pacific Yards by Great Northern trains during the time a drawbridge on its line was impassable. This work was completed on July 28, 1948. The work being of an intermittent character this unit, during this period, performed other work in the Terminal. However, on the Sundays of June 20 and 27, 1948 the employees assigned to this work worked eight hours on each of these Sundays in performing cross-over work in connection with rehabilitating tracks to facilitate Great Northern detours.

Admittedly there was included in the employees used to perform this work on June 20 and 27, 1948 a first class carpenter and a second class carpenter junior in seniority to the Claimants. Claimants contend that because they were senior in service to employees used to perform this work, and available to perform it, they should have been called and base their claim on the Carrier's failure to do so.

Admittedly, there are no specific rules in the parties' effective Agreement that cover the factual situation here presented. But seniority is of the essence of collective agreements and should be properly safeguarded so that employees obtain the full benefits thereof. This Division has often held that it applies to work that Carrier has performed on an overtime basis, although not expressly so provided in the agreement. See Awards 2341, 2716, 2994 and 4393 of this Division.

These Claimants bid for, were assigned to, and held regular positions on the B&B crew at Seattle. When an employee bids for and is assigned to a regular position he is entitled to all of the work of that position. That principle applies to this crew and the members thereof were entitled to the work it performed, whether on a pro rata or overtime basis, on the basis of their seniority.

While Carrier usually split this crew into units or segments for the purpose of performing work, which was undoubtedly convenient and desirable from an operating viewpoint, it could not thereby destroy or defeat the seniority rights of the members of this crew by so doing although, because thereof, it made it extremely difficult to apply seniority to overtime work as these units worked independently of each other and often at considerable distance.

We find that Claimants had the senior right to this work and, being available and the work not being of an emergency character, should have been called. The Carrier, by failing to call them, violated the Agreement.

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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 12th day of August, 1949.