

**Award No. 5903**  
**Docket No. MW-5928**

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
**THIRD DIVISION**

**Paul G. Jasper, Referee**

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

**SOUTHERN RAILWAY COMPANY**

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

(1) The Carrier violated the effective agreement when they failed to utilize the services of Section Laborer Amos B. Redding to make a traffic check at Second Street Crossing, Sheffield, Alabama, for twelve (12) hours on Saturday, September 9, 1950 and for four (4) hours on Mondays, September 11, 1950, and in lieu thereof, assigned the work to a junior employee;

(2) Section Laborer Amos B. Redding be allowed sixteen (16) hours pay at his time and one-half rate because of the violation referred to in part (1) of this claim.

**EMPLOYEES' STATEMENT OF FACTS:** The Carrier determined that it would be desirable to have definite information relative to the average number of vehicles traveling over its highway crossing at Second Street, Sheffield, Alabama.

Consequently, the Carrier decided to make a traffic density check covering two twelve hour periods, one to be made on Saturday, September 9, 1950, the other to be made on Monday, September 11, 1950.

Section Laborer Amos B. Redding, is regularly assigned to the section at Sheffield, maintains a telephone in his home for the Carrier's convenience in calling him for emergency service, has performed service for the Carrier as a Section Foreman, Relief Foreman, and Welder Helper, and was available to perform the services required to make a traffic density check.

The Carrier failed to utilize the services of Section Laborer Redding to make the desired traffic check and in lieu thereof, assigned the work to an extra gang laborer, who is junior in service to Mr. Redding.

Claim was filed in behalf of Section Laborer Redding for all wages which he was deprived of.

Carrier declined claim.

The agreement in effect between the two parties to this dispute dated August 1, 1947 and subsequent amendments and interpretations are by reference made a part of this Statement of Facts.

which rests in the sound discretion of the carrier and that once it makes a finding that senior applicant for the position is lacking in fitness and ability the employe contesting sufficiency of that finding has the burden of overcoming it by proof. Otherwise the carrier's action will not be disturbed.

\* \* \* \* \*

Also see Awards 96, 98, 110, 198, 324, 1009, 1147, 1208, 2031, 2142, 2299, 2350, 2427, 2490, 2615, 2673, 2692, 2791, 2864, 3139, 3466 and 3480."

As evidenced by the record in this case, the carrier, in exercising its sound discretion, determined that claimant Amos B. Redding did not possess the necessary qualifications and ability to make the traffic check here involved; therefore, under the principles of Board Awards, he had the burden of overcoming this finding by proof. No such proof was submitted, and it is now too late for him to do so. His opportunity to submit proof was when his claim was being handled on the property, and not after the case reached the Third Division of the Adjustment Board.

That claim is unsupported by prior Board awards is obvious.

#### CONCLUSION

Carrier respectfully submits that:

- (a) The work of checking railroad and vehicular traffic here involved constituted a special job where alertness and special qualifications and ability were required.
- (b) It was **not** work embraced in the scope of the effective Maintenance of Way Agreement.
- (c) Carrier did not violate the effective agreement as alleged.
- (d) Claim is for only a part of the work involved.
- (e) Following the principles of previous Board Awards claim is **not** supported by any provision of the effective agreement as the management determined that the claimant did **not** possess the necessary qualifications and ability to perform the work here involved and has so proven.
- (f) The claimant contesting the sufficiency of carrier's findings had the burden of overcoming it by proof, which he did not present when handling the claim on the property and is therefore now at this late date barred from presenting such proof.

For all the reasons given, the claim should, in all things, be denied and carrier respectfully requests the Board to so hold.

Carrier in making response in this case, without having seen petitioner's submission, undertaking to meet the issues raised in handling of the case on the property, reserves the right, after being apprised of petitioner's allegations of facts, statement of position and argument, to present such additional evidence and argument as to it may seem appropriate and necessary for a complete presentation of the case.

All relevant facts and arguments in this case have been made known to the employees' representative.

(Exhibits not reproduced.)

**OPINION OF BOARD:** The Carrier decided to conduct a traffic density check over the Second Street Crossing in Sheffield, Alabama.

H. W. Dickerson was picked from the extra gang laborers to make the check.

The check was to cover the two periods of 12 hours each from 6:00 P. M., September 9, 1950 to 6:00 A. M., September 10 and 6:00 A. M., September 11, 1950 to 6:00 P. M. the same day.

The Claimant, Amos B. Redding, is employed as a section laborer regularly assigned to a section gang at Sheffield. His seniority as a laborer was restricted to his respective gang as provided under Rule 4.

Redding claims he is senior to Dickerson and should have been called and assigned to do the work of checking the traffic density.

There are no serious disagreements that this is special work not covered by the Agreement. The Claimant contends, however, that since the work was assigned by the Carrier to the Track Department laborers, the senior man available should have been used.

From the facts and the Agreement, we now find that the work of checking traffic density was special work and not within the scope of the Agreement, Rule 1.

If the Carrier had picked a man qualified and available but with less seniority than the Claimant from the Claimant's gang, then he could complain, but not otherwise.

Rule 3, Seniority Datum, was not violated.

Because of what we have heretofore said, we need not decide the Claimant's contentions that Rule 11, Basis of Promotion, and Rule 39, Composite Service, were violated.

**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 the Agreement was not violated.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon  
Acting Secretary

Dated at Chicago, Illinois, this 30th day of July, 1952.