

Award No. 583

Docket No. MW-675

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY
EMPLOYES**

ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM: "Claim of John Martin, section laborer, Bluford, Ill., that he be reimbursed at section laborers' rate of pay—37½¢ per hour, for time lost from July 9th to December 19th, 1936 inclusive, on account of being laid off in force reduction, while a junior section laborer on that section was retained in the service."

STATEMENT OF FACTS: The following statement of facts was jointly certified by the parties.

"On July 9, 1936, the number of men employed in the section crew at Bluford, Illinois, was reduced. John Martin was one of the men laid off as a section laborer. Another section laborer, Lee Jones, who held seniority on the same roster as John Martin and was junior to Martin was operating the supervisor's inspection motor car and performing odd jobs, such as attending switch lamps and janitor's work around the office at Bluford during his spare time when the force reduction was made, and continued to do so on certain days when Martin was laid off between July 9 and December 19, 1936.

"Below is shown the seniority date of each of these two employees:

Name	Seniority Date
John Martin	October 16, 1929
Lee Jones	May 20, 1930"

POSITION OF EMPLOYES: "On July 8, 1936, reduction in force was made in the section crew at Bluford, Ill. Schedule Rule governing force reduction reads in part:

'Rule 6. When forces are reduced, senior employees in their respective classes shall be retained. Employees laid off or displaced will have the right to exercise their seniority rights as follows:'

"This rule provides that when forces are reduced, the senior employees shall be retained. In this instance, however, instead of retaining the senior section laborers, John Martin with seniority rights as of October 16, 1929, was laid off, while Lee Jones with seniority rights as of May 20th, 1930, was retained in the service.

"John Martin being senior to Lee Jones contended that he should have been retained in the service instead of Jones and wrote his supervisor Mr. Van Arsdalin, inquiring the reason why he was laid off, while Lee Jones, a junior man was retained in the service. Receiving no reply from the supervisor, John Martin turned the case over to General Chairman F. L. Noakes,

"As regards time lost by Martin: A check of our records shows that from July 9 to December 19, 1936, the service performed by Martin and his earnings were as follows:

	Service Performed	Earnings
July	28 hours	\$10.50
August	88 "	33.00
September	72 "	27.00
October	32 "	12.00
November	13 "	4.88
December 1st to 19th	40 hours—straight time)	19.25
	4 " —overtime)	
Total—		\$106.63

"During the above period Martin was also employed part of the time by the National Youth Administration, and a check of the Administration's pay-rolls at Mt. Vernon, Illinois, shows the following hours worked and payments made to him:

	Hours Worked	Earnings
July	44	\$15.00
August—Pay roll could not be located		
September	22	7.04
October	65½	23.10
November	22	7.70
December	44	15.40
Total—		\$68.24

Total Earnings from the Railroad and the National Youth Administration combined \$174.87

"During this same period Lee Jones' earnings amounted to a total of \$414.39. In other words, Martin earned \$239.52 less than was earned by Jones from July 9 to December 19, 1936.

"As stated above, had Martin qualified for the position of motor car operator, he would have been permitted to displace Jones in accordance with his seniority rights. However, he did not so much as express a desire to qualify and/or displace Jones. Jones was not afforded any advantages which were not available to Martin, but Jones did qualify for the position of motor car operator and benefited thereby to the extent of being retained in the service on certain days between July 9 and December 19, 1936, when Martin was laid off. Martin had the opportunity to qualify but failed to take advantage of it, of his own choosing. The facts and circumstances in this case do not justify the claim, and we respectfully ask that it be denied."

OPINION OF BOARD: Under the circumstances of this case, involving, as they do, the application of the force reduction rule of the agreement, which provides that in event forces are reduced laborers affected will have the right to displace junior laborers in service on the Supervisor's district on which employed, it was not permissible to retain Lee Jones, section laborer, an employe junior to John Martin, section laborer, who was continued in service when on July 9, 1936 forces were reduced on the section at Bluford, Illinois, upon the roster of which both employes held seniority.

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 the retention of Lee Jones, section laborer, an employe junior to John Martin, section laborer, when on July 9, 1936 forces were reduced on the section where both employes held seniority was in violation of Rule 6 (b) of the agreement between the parties.

AWARD

Claim sustained for wage loss, July 9th to December 19th, 1936 inclusive, subject to deduction of amounts earned during the same period in other employment.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 9th day of March, 1938.