

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Ernest M. Tipton, 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:

(a) That the Carrier violated the current agreement by assigning section laborers to assist Water Service Repairman R. Woods at Daytons Bluff, Minnesota on December 2, 3, 4 and 5, 1940; and

(b) That C. M. Doran, laid-off bridge and building laborer, LaCrosse Division, be paid bridge and building laborer's rate of pay of 43 cents an hour for eight hours on December 2, 3, 4 and 5, 1940.

EMPLOYES' STATEMENT OF FACTS: The seniority roster published May 1, 1940 on the LaCrosse Division indicating the seniority rank of bridge and building laborers shows C. M. Doran with a seniority date in this classification as of September 23, 1936.

Mr. Doran was laid off on account of force reduction on November 30, 1940. On December 2 two section laborers from the Daytons Bluff section were assigned to assist Water Service Repairman Woods. The section laborers continued to assist the water service repairman eight hours per day on December 3, 4 and 5.

Water Service Repairman Osmer from the Galesburg Division also assisted Repairman Woods on the aforementioned dates. Repairman Osmer does not have seniority on the LaCrosse Division but maintains his seniority on the Galesburg Division.

The agreement in effect between the Carrier and the Brotherhood of Maintenance of Way Employes is, by reference, made a part of this Statement of Facts.

POSITION OF EMPLOYES: The Employes quote the following rules from current agreement in support of their position:

"Rule 4. Seniority rights of all employes shall be confined to the sub-department in which employed and to the territory of one Operating Division, except as hereinafter provided in this rule. The sub-departments shall be as follows:

Track
Bridge and Building
Roadway Equipment Machine
Maintenance of Way Welding

The provisions of Rule 24 (b) are designed to give to employes in the B&B Department a right to exercise seniority privileges not more than once each month on positions for which they express preference. To that extent its intent and function is somewhat similar to the more or less standard practice of bulletining other positions. Specifically, upon issuance of the monthly bulletin a senior employe may displace a junior employe if he desires to do so. However, except as outlined above and except in event of force increase, there is no requirement that the carrier use any particular individual for a short period such as the four days involved in this claim. Temporary vacancies may be filled at the discretion of the Management, giving preference to senior available employes over new men (men not in the Company's service). In this respect the Division said, in Award No. 1150:—

“Since the carrier was under no obligation to assign the emergency work here involved on the basis of seniority, it is unnecessary to consider the merits of the conflicting contentions as to the availability of the claimants.”

In summation, the Carrier briefs its position as:

1. The claimant held no seniority in the Water Service Department.
2. The claimant did hold seniority in the B&B Department, but there is no requirement to use B&B men to act as laborers under Water Service Department employes.
3. Even though such requirement did exist, there is no requirement to use the senior laid off B&B laborer on temporary work of the character in question; and
4. The claimant was not the senior B&B laborer laid off and therefore had no right to be recalled under any circumstances until employes his senior had been recalled to service.

OPINION OF BOARD: On the dates in question, two section laborers assisted Water Service Repairman R. Woods, at Daytons Bluff, Minnesota, in opening up a clogged waterline. These sectionmen unloaded and loaded materials, dug, and back-filled a trench. It is the contention that these sectionmen held seniority rights in the Track sub-department and this work came under Bridge and Building sub-department. To support this contention, the employes rely upon Rule 4 of the agreement which is, in part, as follows:

“Seniority rights of all employes shall be confined to the sub-department in which employed and to the territory of one Operating Division, except as hereinafter provided in this rule. The sub-department shall be as follows:

Track
 Bridge and Building
 Roadway Equipment Machine
 Maintenance of Way Welding”

For the purposes of this claim only, we will assume but not decide that laborers in the Track sub-department did not have rights as laborers in the Water Service Department, yet the Board is of the opinion that this claim should be denied because there is no showing that the claimant had a right to perform this work.

The record shows the claimant had seniority rights as a laborer in the Bridge and Building sub-department, LaCrosse Division, but from the exhibits in the record, it is shown that he did not have any seniority rights in the Water Service Department. In fact, the lowest rated employe in that Department is a helper.

Employees contend the Water Service Department is a part of the Bridge and Building sub-department. This is not denied, but the record shows there is a separate Seniority Roster for the Water Service Department and the Bridge and Building Department.

The employees contend that these Seniority Rosters are interchangeable. To support that contention, they produce Seniority Rosters of other Divisions. The Roster at Ottumwa Division shows that one employe holds seniority rights in both the Water Service Department and in the Bridge and Building Department; that two employes hold seniority rights only in the Water Service Department; and other employes are shown to have seniority rights in the Bridge and Building Department but not in the Water Service Department.

If it is a fact that the seniority rights are inter-changeable between the Bridge and Building Department, and the Water Service Department, the employes have failed to sustain their burden of proof to prove such fact.

To sustain their position, the employes quote Rule 8 (c) which reads:

“An employe qualifying for and accepting a position in any class will thereby establish the same seniority date for himself in all lower classifications in the same sub-department in which he has not already established seniority.”

This rule provides that sub-department seniority applies to all classes in that sub-division, and it gives to an employe seniority rights in all lower classifications as of the date he was originally employed in a higher classification. For instance, if a man was originally employed as a Water Service Repairman, he would also have seniority rights as a helper of the same date.

However, the converse of that proposition would not be true. If he was employed as a helper in the Water Service Department, he would not automatically obtain seniority rights as a Water Service Repairman.

This rule has no application to the facts in this record, and the claim should be denied.

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 employes involved in this dispute are respectively carrier and employes 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 under facts in this record the claim should be denied in conformity with the Opinion.

AWARD

Claims denied in conformity with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 5th day of March, 1943.