

Award No. 2599

Docket No. MW-2692

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES**

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC  
RAILROAD COMPANY**

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

(a) That the Carrier violated the provisions of Rule 3 and other seniority rules of the current Agreement when it required and assigned a junior section laborer to perform service at North Hooper Coal Chute, Terre Haute Division, during the period December 1, 1940 to February 28, 1941; and

(b) That Delmar E. Fortin, section laborer, be compensated for loss in earnings during said period account not being called by the Carrier in line with his seniority to perform the required service.

**JOINT STATEMENT OF FACTS:** Delmar E. Fortin holds seniority as section and coal chute laborer on the Terre Haute Division, with seniority date of August 18, 1938. On certain days during the months of December, 1940, January and February, 1941, when it was necessary for the coal chute foreman at Hooper chute to have the assistance of a laborer in the handling of coal, Section Laborer Joseph G. Fawbush was used for this service and on such days Mr. Fortin performed no service.

The agreement in effect between the carrier and the Brotherhood of Maintenance of Way Employees is by reference made a part of this statement of facts.

**POSITION OF EMPLOYEES:** As stated in Employees' Statement of Facts, Delmar Fortin holds seniority as section and coal chute laborer on the Terre Haute Division as of August 18, 1938. For some time prior to May 20, 1940 he worked as a coal chute laborer at Hooper Chute, Illinois. Being laid off at the coal chute, Fortin in the exercise of his seniority worked as a section laborer from July 18th to September 10th and from September 12th to October 12, 1940 when he again was laid off in force reduction. Being laid off in force reduction he, in conformity with the agreement in effect and rulings of the Carrier, filed his name and address with the appropriate officer of the railway on November 11, 1940, expressing his desire to retain his seniority.

Rule 3 of Agreement in effect reads:

**"CONSIDERATION FOR POSITIONS—**Rights accruing to employees under their seniority entitle them to consideration for positions in accordance with their relative length of service with the Railroad as hereinafter provided."

he be permitted to perform the service, this privilege was granted as is indicated above. Had Mr. Fortin reported to the coaling plant on other days when extra service was required, he would have been accorded the same privilege.

In other words, vacancies or new positions of less than 30 days, or irregular work, may be filled or performed by an immediately available employee. This is contemplated by the Rule and this principle has been sustained by your Board in Award No. 1177.

The carrier contends there is no basis for the claim under Schedule Rules and respectfully requests that same be declined.

**OPINION OF BOARD:** This claim involves extra work of irregular occurrence and indefinite duration.

The preponderating evidence of record, as we view it, indicates the claimant, in order to make himself available, offered to show up at the Coal Chute each day to ascertain if there was any extra work, and this offer was either declined or not accepted. Under such facts and circumstances the claim should be sustained.

**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 claim will be sustained in accordance with Opinion.

#### AWARD

Claim sustained in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson  
Secretary

Dated at Chicago, this 7th day of June, 1944.