

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

(Edward F. Carter, Referee)

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY
COMPANY**

(Joseph B. Fleming and Aaron Colnon, Trustees)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that Mr. O. J. Smith, section man, Altoona, Iowa, be paid for two calls on October 20, 1942.

EMPLOYEES' STATEMENT OF FACTS: Sometime during the evening and night of October 20, 1942, the section foreman at Altoona, Iowa, Des Moines Division, was called by the operator to render service in extinguishing a fire on the right-of-way. The section foreman called a junior section man two times during the evening and night to assist him in this work. The senior section man on that section, O. J. Smith, was immediately available for call, but was not called.

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

POSITION OF EMPLOYEES: As stated in Employees' Statement of Facts, on October 20, 1942, a condition arose on the section at Altoona, Iowa, which necessitated overtime service and which afforded the section foreman and one of the section men on that section an opportunity to work some overtime and earn some additional money.

Every man employed, whether it be on a railroad or anywhere else, is seeking to improve his economic status, to gain advancement and to work in his own rank whenever an opportunity affords in order to make his earnings as large as possible. To assure employees in the Maintenance of Way Department of that opportunity, rules have been negotiated and written into agreement between the Carrier and the Brotherhood which provide that the senior employee shall be given preferred consideration for advancement, opportunity for service, etc. We quote Schedule Rules 2(a) and the first paragraph of Rule 3(a):

"RULE 2. SENIORITY. (a) Seniority begins when employee's pay starts, except promoted employees will establish seniority in the higher class only from the date assigned by bulletin to such vacancy or new position. Rights accruing to employees under their seniority entitle them to consideration for positions in accordance with their relative length of service with these railways as hereinafter provided."

"RULE 3. (a) RIGHTS OF SERVICE MEN. Seniority rights of section men, as regards retention in service, will be restricted to their respective gangs, except that when force is reduced section men affected may displace section men junior in service under their respective Roadmasters."

Mr. Smith, went on and put out the fire. When they returned to the tool house, the operator advised them of another fire which they went out and took care of on the same call.

From the above, it will be noted that the section foreman did attempt to secure the services of section laborer Smith, as it was his intention to use both Smith and Lee, but failing to contact Mr. Smith, he had no other alternative than to hurry to the fire with the remaining section laborers. In case of fire or other emergency endangering the property of the Carrier, any and all employees, regardless of craft, are charged with the responsibility of protecting the Carrier's property.

The facts in this case warrant denial by this Board of the employees' claim.

OPINION OF BOARD: On October 20, 1942, the Section Foreman at Altoona, Iowa, was called to render service in extinguishing a fire on the right-of-way. The Foreman called Lewis Lee to assist him. Lee was junior to the Claimant, O. J. Smith, who was entitled by seniority to the work.

The Foreman testifies that he stopped at Smith's home on the way to the fire for the purpose of calling him to assist and not finding him there, proceeded without him. Claimant Smith and his wife assert that Smith was at his home on the day and at the time in question. It is upon this conflicting evidence that this decision rests.

The extinguishing of fires threatening the Carrier's property is, of course, work of an emergent character. The Foreman would be expected to respond with whatever force deemed necessary as speedily as he could. Seniority rights must be respected but the emergent character of the work is such that the Foreman could not be expected to take much time to round up men in accordance with seniority rules. If the Foreman called at Smith's home and failed to find him there, the requirements of the rule have been met under the circumstances here shown.

After considering the evidence of the parties, the interests of each and the likelihood of their stories being true, we are obliged to say that the Claimant has failed to prove his claim by evidence preponderating in his favor. The statements of both the Foreman and the Claimant could well be true, in which event, we would be required to say that the Foreman met the requirements of the Agreement under the facts here shown. There is, therefore, no basis for an affirmative award.

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 evidence is insufficient to sustain an affirmative award.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 20th day of June, 1945.