

**Award Number 3091**  
**Docket Number MW-3071**

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

Edward F. Carter, Referee

**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**  
**ILLINOIS CENTRAL SYSTEM**

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

(1) That the Carrier violated the seniority provision of the Agreement in effect in assigning a junior employe to work overtime on the following dates: December 17, 1943, February 11, 13, and 23, 1944, instead of calling senior carpenter Andy Nichols who was available to perform the overtime work in question;

(2) That Andy Nichols shall be paid at the time and one-half rate for the number of hours and on dates as follows:

December 17, 1943	— 8 hours
February 11, 1944	— 8 "
" 13, 1944	— 9 "
" 23, 1944	— 3 "

A total of                      —28 hours

**EMPLOYEES' STATEMENT OF FACTS:** Andy Nichols holds seniority rights as of October 1, 1921.

Dewey Mosley holds seniority rights as carpenter as of March 1, 1940.

J. G. Whittington holds seniority rights as B&B helper as of September 2, 1919.

On December 17, 1943 and February 23, 1944 some mechanical adjustments were required during overtime hours in the sand house at Central City, Kentucky. Instead of calling carpenter Andy Nichols for performance of that work the Carrier called B&B helper J. G. Whittington. On February 11th and 13th, 1944 some mechanical adjustments were required during overtime hours on the coal chute at Dawson Springs, Kentucky. Instead of calling Andy Nichols, the senior carpenter, for the performance of that overtime work the Carrier called junior carpenter Dewey Mosley.

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, some time during the evening of December 17, 1943 and again on February 23, 1944 conditions arose necessitating certain mechanical adjustments in the

2. Even though the employees covered by the agreement between the Illinois Central Railroad Company and the Brotherhood of Maintenance of Way Employees, had a contractual right to this work, which is denied by the Carrier, claimant has no proper claim as a man senior to him in the class to which this work belongs was used for the work on the dates in question.
3. Claimant has no just claim to pay for work performed by Dewey Mosley on February 11 and 13, 1944.
4. This is not work which is covered by the agreement between the Brotherhood of Maintenance of Way Employees and the Illinois Central Railroad Company.
5. Even though this work were covered by this agreement, which is denied by the Carrier, the claim for February 11, 1944, is not valid for several reasons, viz., (a) both Mosley and Nichols are shown by the record to have received compensation for eight (8) hours' work on this date and (b) the past practice was to use the employe whose home point was nearest the point at which he was to be used for emergency work.
6. The claim for February 13, 1944, is not valid since the disputed action is in accord with the practice of using the employe whose home point is nearest the point at which he was to be used for emergency work.

There has been no conference on the property in regard to this claim and Carrier requests right to submit any additional information necessary to support its position in this case.

**OPINION OF BOARD:** The record shows that J. G. Whittington, a B&B Helper, was called on December 17, 1943, and on February 23, 1944, to perform emergency work in the sand house at Central City, Kentucky. On February 11 and 13, 1944, Dewey Mosley, a junior carpenter, was called to perform emergency work at the coal chute at Dawson Springs, Kentucky. Claimant, a senior carpenter, contends that he should have been given the work.

While the Organization contends that these two employes were called to perform mechanical work in connection with the sand house and coal chute, the record is devoid of proof of this fact. It is evident that Whittington was called to dry sand during sub-freezing weather and that Mosley was called to prevent coal from blocking the throat of the chute leading from the bin to the apron by freezing. This is clearly laborer's work under the agreement with Stationary Engineers, Firemen and Oilers, Roundhouse and Shop Laborers, and outside the scope of the Maintenance of Way Agreement. Consequently, when the Carrier sought employes under the scope of the Maintenance of Way Agreement to perform laborer's work, it was not necessary that it call a carpenter or carpenter's helper.

We do think that the Carrier was obliged to give effect to seniority by giving the work to the senior available employe of the class on the B&B Group roster when it elected to call employes from that class. See Awards 2341 and 2994. No basis exists for an affirmative award on this portion of the claim.

Applying the same rule to the work performed by Mosley on February 11 and 13, 1944, we find that Claimant had an earlier seniority date than did Mosley. Consequently, if Claimant was available, he was entitled to the work in preference to Mosley.

It must not be overlooked that the work performed by Mosley belonged to another craft and was emergent in character. While the Carrier must not ignore the seniority of available employes in calling them for emergency work, its very nature is such that availability is of prime importance. If a senior employe is working a regular assignment there is no obligation on the carrier to wait until he completes his tour of duty and permit him to work at the overtime rate. Neither is the carrier required to call senior employes a great

distance away for emergency work belonging to another craft. All requirements are met under such situations if the carrier has acted reasonably and not arbitrarily or capriciously. We think the Carrier was acting reasonably in calling Mosley to perform the work. The existing situation does not indicate that the Carrier was arbitrary, capricious, or unfair in the manner of calling employees for this emergent work. This is all that is required when the work is emergent and outside the scope of the agreement covering the employees called. There is 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 there was no violation of the current Agreement.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST. H. A. Johnson,  
Secretary.

Dated at Chicago, Illinois, this 29th day of January, 1946.