

Award No. 3204

Docket No. MW-2952

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Mart J. O'Malley, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

**THE CHICAGO, ROCK ISLAND AND PACIFIC
RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that L. H. Buchanan shall be paid the difference between what he received as a B&B helper and that which he should have received as a B&B carpenter during the period from August 3 to October 12, 1943, inclusive.

EMPLOYES' STATEMENT OF FACTS: L. H. Buchanan was employed as a B&B Carpenter Helper in B&B Gang No. 6, Arkansas Division, at the rate of 65c per hour. Instead of promoting and assigning Buchanan to the rank of carpenter, the Carrier engaged a new man, George A. Kizzire, and assigned him as carpenter at the rate of 73½c per hour. While this new employee was working in the rank of carpenter, Buchanan was continued in the lower rank of B&B carpenter helper until October 12, 1943, when he was promoted to the rank of carpenter.

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

POSITION OF EMPLOYES: As stated in Employees' Statement of Facts, L. H. Buchanan was working in Bridge and Building Gang No. 6, Arkansas Division, in the rank of B&B Carpenter Helper. It appears that the Carrier was in need of additional carpenters in that gang and so on August 3, 1943, engaged a new man and assigned him as carpenter, yet continued L. H. Buchanan in the rank of carpenter helper. That L. H. Buchanan was qualified for promotion and assignment as carpenter is evidenced by the fact that on October 12, 1943, he was promoted and assigned to that rank.

Every man employed, whether it be on a railroad or anywhere else, is seeking to improve his economic status, to gain advancement and an opportunity to work in a rank to which his seniority entitles him. 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 employees in the service shall have an opportunity for promotion and advancement. We quote Schedule Rules 2(a), 3(c), 4(a) (b) and (c), and Rule 10:

"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

penters are supposed to provide themselves with whatever additional tools are necessary to perform the class of work that they are supposed to do."

When the vacancy as B&B carpenter occurred in August, 1943, B&B Helper Buchanan asked he be used to perform this work. As Buchanan did not have the tools required of skilled workmen under Rule 44, Master Carpenter J. S. Langston told him to secure such tools and see him later which Buchanan indicated he would do. The following week, according to B&B Foreman Russell, Mr. Buchanan returned with only a square. Subsequently, Mr. Buchanan was permitted to take a permanent B&B Carpenter position on October 12, 1943, even though he had not then secured all the tools necessary that a B&B carpenter have to properly perform his work, such as a plane, adz, hack saw, tape, chisels, but later when he bid in a B&B carpenter position in B&B Gang No. 6, December 11, 1943, and was assigned, he had secured most of these tools.

In substantiation of the above, the following statement from B&B Foreman A. B. Newsom is quoted:

"I relieved Mr. Carl Russell on September 16, 1943, at time of his retirement. Mr. Buchanan did not have necessary tools to perform B&B Carpenter's work at that time, but expressed his willingness to secure them should he be promoted. He was promoted on October 12th and transferred to B&B Gang No. 2. I was also transferred to B&B Gang No. 2 on October 12th with Mr. Buchanan working under me until December 11, 1943. He had not yet secured those tools necessary to perform his duties as a carpenter and it was necessary for me to insist that he secure those tools—namely, a plane, adz, hack saw, tape, chisels, etc. or be disqualified. He had secured most of tools needed when he bid in a carpenter's job on B&B Gang No. 6 on December 11."

It is apparent, therefore, from the above, that during the period August 3, 1943, to October 12, 1943, for which additional pay is now claimed, Mr. Buchanan did not have in his possession the necessary tools to perform any and all work required of a B&B carpenter and even after he was assigned as a B&B carpenter on October 12, 1943, he still had not secured the required tools.

An employee who seeks a position on which there are certain agreed requirements should take the necessary steps to meet those requirements. In this case Mr. Buchanan did not meet those requirements in August, 1943, and on that basis his claim should be denied.

OPINION OF BOARD: This matter involves the claim of L. H. Buchanan that he should have been elevated to the rank of B&B Carpenter on August 3, 1943, and that he should be paid the difference between what he did receive as a B&B Helper and what he would have received if he had been promoted on the date named. The Carrier did promote this man on October 12, 1943, so that this claim involves the period between August 3, 1943 and October 12, 1943. The employees assert that promotion under Rule 10 should precede securing tools under Rule 44. The rules governing this matter are as follows:

"Rule 10. Basis of Promotion. Employees in these departments will be considered for promotion based on ability, merit, fitness and seniority. Ability, merit and fitness being equal, seniority shall prevail, the employing officer to be the judge, subject to appeal."

"Rule 44. Tools. The carriers will furnish the employees such general tools as are necessary to perform their work, except such tools as are customarily furnished by skilled workmen.

INTERPRETATION: In the case of tools furnished by skilled workmen it is the understanding that these are the personal property of the skilled workmen and are not for common use by any and all men in the gang.

A carpenter's helper should provide himself with a hammer, a hand axe, a cross-cut hand saw and a square, which is the minimum

personal tools of a carpenter's helper. First and second-class carpenters are supposed to provide themselves with whatever additional tools are necessary to perform the class of work that they are supposed to do."

It is admitted by the Carrier that Buchanan had the ability to perform the work of B&B Carpenter. It is asserted that he did not possess the requisite tools under Rule 44. This Board has held that the Carrier must be permitted to exercise managerial judgment on applicants for promotions under Rule 10. It was the responsibility of the Carrier to select a carpenter who possessed ability, merit and fitness. When the Carrier acts in good faith, without bias or prejudice and does not indicate a disposition to evade the rules in letter or spirit, this Board will not interfere.

Under Rule 44 the Claimant had an obligation to furnish the tools necessary to perform the work of the carpenter. The Carrier had the right to insist that he have those tools when he went on the job as a carpenter, and the Carrier had the right to refuse to permit him to work unless he did have the required tools. The evidence is not disputed that from August 3, 1943 to October 12, 1943, this man did not have the required tools. He was in no position, during that time, to perform the work of a B&B Carpenter. He had the ability, he may have merited a promotion, but did he have fitness? Each word in a contract must be used in ascertaining its meaning. The word "fitness", has many meanings, but here following the words "ability" and "merit", it undoubtedly is used to connote adequacy and preparation for the work to be performed. It is requested that the Board allow compensation to Buchanan for work which he had the ability to do, which he merited because of faithfulness in his occupation as a helper, but for which he had not adequately prepared himself to perform by the securing of the necessary tools. Without the tools he could not do the work and the Carrier had the right to insist that he be ready to do the work at the moment he commenced to draw the higher rate of pay. We cannot say that one rule supersedes or precedes the other. Compliance with both is necessary.

If we were to determine that the Carrier violated the Agreement by not promoting Claimant on August 3, 1943, we then would be confronted with the problem of applying a punitive rule to a contract breach, where no damage has been shown. Certainly the Claimant should have been in a position to do the work of a carpenter for the period of time for which he claims the pay of one.

The result in this cause must be confined to the factual situation presented in this particular case.

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 employee involved in this dispute are respectively carrier and employee 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 carrier did not violate the terms of the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 16th day of May, 1946.