

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Carroll R. Daugherty, Referee**

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

**ELGIN, JOLIET AND EASTERN RAILWAY COMPANY**

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

(1) The Carrier violated the effective agreement when they failed to assign the senior Bridge and Building Carpenter and the senior Bridge and Building Mechanical Helper to perform overtime service on February 17 and 18, 1950, and in lieu thereof, assigned the work to junior employees;

(2) That the senior Bridge and Building Carpenter and the senior Bridge and Building Mechanical Helper on the Joliet Division be paid at their respective time and one-half rate of pay for a total of fourteen (14) hours each, because of the violation referred to in part (1) of this claim.

**EMPLOYEES' STATEMENT OF FACTS:** The Carrier has on its property at the East Joliet Terminal, a power house which contains coal burning boilers which are automatically fired.

Coal is placed in a hopper with the aid of a crane, and the lower end of the hopper permits coal to uniformly drop on an endless steel conveyor which in turn constantly carries the coal into and throughout the length of the boiler's firebox. The movement of this conveyor is identical to the movement of a belt that transfers a motor's rotary movement and power to the facility to which it is attached. This steel conveyor is more than a conveyor in that it also functions as the grates of the boilers.

Coal is ignited as it enters the firebox through its contact with the adjoining burning coal, small ash falls through the conveyor grates as it forms and the large ash drops off at the end of the conveyor grate's forward movement.

At approximately 1:30 P. M. in the afternoon of February 17, 1950, the shear pin on the connection between the conveyor grate and the motor which propelled it, broke. The shear pin was replaced several times but continued to break, therefore it was decided that the obstruction which caused the shear pin to break would have to be removed.

Four members of the East Joliet Yard Bridge and Building Gang, who had been engaged on repairs to the boiler immediately next to the boiler involved herein, since 8:00 A. M., were instructed to assist in making repairs, suspending their prior work. They were Masons Berg and Saxon and Mechanical Helpers Poole and Allendorf. Mr. Berg holds seniority as a

department, under the scope of another agreement. This, the Carrier submits, is a demand not supported in any way by the provisions of the Organization's agreement, which is the only agreement under which it can claim. Therefore, part (2) of the claim should be denied for this reason as well as the others submitted.

### CONCLUSION.

The Carrier summarizes its arguments in this case as follows:

1. The work in dispute was not contemplated within the scope of the agreement between the Carrier and the Organization.
2. Therefore, any assignment of such work to the employes of the Maintenance of Way Department should not be governed by the provisions of the Organization's agreement.
3. The disputed work was assigned, independently of any provisions of the Organization's agreement, on the basis of informal agreements with Holmquist and Larson as individual employes performing work outside their normal department.
4. Holmquist and Larson were not paid for the disputed work in accordance with provisions of the agreement governing their work in their normal department, but rather in accordance with the applicable provision in the agreement covering employes by whom the work ordinarily would have been performed.
5. Prior Awards of this Board support the Carrier's position in this case.
6. As the agreement contains no penalty provision, part (2) of the claim should be denied in any event, whether or not part (1) is upheld.

Accordingly, the Carrier requests that the Board deny the claim in this case.

Material herein has been discussed with the Organization, either in conference or in correspondence, in an effort to resolve the dispute on the property of the Carrier.

**OPINION OF BOARD:** In this case the issue presented to us is not a complicated one. It is simply this: when the Carrier employed Bridge and Building Carpenter Holmquist and Bridge and Building Mechanical Helper Larson to perform overtime and rest-day work (for which they were duly paid at their proper time and half rates of pay) in the Carrier's Maintenance of Equipment Department, which is ordinarily preformed by the employes of that Department represented by the International Brotherhood of Firemen, Oilers, etc., and is ordinarily governed by the provisions of the Agreement covering that Brotherhood's members, did the Carrier violate Rule 3 of the Agreement covering employes represented by the Organization? This Rule (and related ones) makes it clear that assignments to positions are to be based on length of service. And, we think, the Rule is applicable to all sorts of positions covered by the Agreement, whether regularly bulletined or temporary.

The Carrier was entirely free to choose from which class of employes it should select men to perform the work in question. But, having decided to use Bridge and Building employes, we think Carrier was bound to use men senior to Holmquist and Larson.

From our conclusion that the Carrier violated the Agreement it follows further that penalty should be assessed in the amount of pro rata rates of

pay for the fourteen hours of work which should have been assigned to the senior Bridge and Building Carpenter and the senior Bridge and Building Mechanical Helper; and these employes should receive such pay.

**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 the Carrier, being obligated to apply the applicable rules of the Agreement to work done by employes subject thereto, violated Rule 3 thereof.

#### AWARD

Claims (1 and 2) sustained in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon  
Acting Secretary

Dated at Chicago, Illinois, this 30th day of June, 1952.