

**Award No. 5939**

**Docket No. MW-5957**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Jay S. Parker, Referee**

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES  
CHICAGO, ROCK ISLAND & PACIFIC RAILROAD COMPANY**

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

(1) The Carrier violated the effective agreement when they failed to assign Bridge and Building Mechanics Rocco Martino and Garrett DeYoung to perform overtime service in connection with work at the Coal Chute at Blue Island, Illinois on February 25, 1950, and in lieu thereof, assigned the work to junior Bridge and Building Mechanics;

(2) Bridge and Building Mechanics Rocco Martino and Garrett DeYoung be allowed eight (8) hours' pay at their respective time and one-half rates, because of the violation referred to in part (1) of this claim.

**EMPLOYES' STATEMENT OF FACTS:** The Carrier has on its property at Blue Island, Illinois, a coal chute which is designated as the "Burr Oak" coal chute. The employees assigned to the work in connection with the Burr Oak coal chute are carried on the payroll of Bridge and Building Gang No. 2, which is under the supervision of Bridge and Building Foreman James Hunter, also stationed at Blue Island, Illinois.

For some time prior to February 25, 1950, the Carrier had assigned section men to assist the coal chute employees on account of cold weather and the quality of the coal being unloaded.

On Saturday morning, February 25, 1950, the section men were required to restrict their services to snow removal and consequently were not available to render any assistance to the coal chute employees.

The Carrier's Division Engineer, Mr. W. E. Simpson, therefore, personally notified Bridge and Building Mechanics John Atzinger, Dan Marobali and Mike Errico, members of Bridge and Building Gang No. 2, to report to the coal chute to perform the required services. Bridge and Building Foreman James Hunter was not consulted or advised therewith.

Eight hours' service was performed by each of the above mentioned Bridge and Building Mechanics, for which they were compensated at their respective time and one-half rates of pay because of work performed on their regular assigned rest day.

storm and again on February 25 we had a snow storm, and the section men who had been coming to the coal chute each morning had to sweep the snow from the switches. For that reason it was necessary that we get the nearest available supply of labor for assisting the coal chute operator to put up coal.

"On the morning of the 25th we called John Atzinger, first-class carpenter, Dan Marobali, second-class carpenter, and Mike Errico, second-class carpenter.

"It is true that Rocco Martino is the oldest first-class carpenter on this gang, but in the past on account of his age, we have not called him for any emergency work. Rocco is a very good man, but he is almost seventy years old and does not desired to be called for emergency work.

"On the night of May 27, 1950, it was necessary to make emergency repairs to the roundhouse door at Blue Island, and in order to confirm the above I had the transportation clerk call Rocco Martino to assist in this work. He stated to the transportation clerk that he did not want to be called for night work. I cannot understand why he should make a claim for punitive overtime on account of not being called when he has never been called in the past. I am asking that the claim by Rocco Martino be withdrawn.

"In the case of Garrett DeYoung, I do not feel that for this labor work it was necessary to call out B&B carpenters in their seniority order. For that reason we called the two oldest second-class carpenters for this work which is merely labor work assisting the coal chute operator. For the above reason, I am declining claim made by Garrett DeYoung.

Very truly yours,

/s/ F. E. Wheeler."

It must be remembered that the Division Engineer is a practical railroad man. If the employe seventy years old has long expressed a desire to forego emergency calls at night—was it not logical to assume that the employe would not want to spend his rest day working out in the cold picking frozen coal? This was an emergency—the Division Engineer could not foresee the storm and the resultant need for these men. Under these conditions, is it mandatory that the Division Engineer, who was very busy because of the storm, first call this employe to learn of the employe's desire to work? The carrier firmly believes that the Division Engineer acted as any practical railroad man would under such conditions.

After calling the senior **available** first-class carpenter, the Division Engineer then called the two senior available second-class carpenters in accordance with seniority provisions.

In consideration of the facts presented, the carrier respectfully petitions the Board to deny this claim.

**OPINION OF BOARD:** On February 25, 1950, due to a snowstorm requiring their services elsewhere, the section men normally assigned to perform the work in question were not available. Thereupon Carrier elected to call Bridge and Building Carpenter Atzinger (Mechanic First-Class) and Bridge and Building Carpenters Marobali and Errico (Mechanics Second-Class) to perform eight hours, daytime, labor in assisting coal chute employes in the performance of their work. It is conceded that under the existing facts Bridge and Building Mechanics would not otherwise have been entitled to perform such work; that the men called to perform it and the Claimants are all members of Carrier's Bridge and Building Gang, Crew or Group No. 2; and that notwithstanding Claimants are senior to the two employes

Carrier made no attempt to call them for service, although they both had telephones, and used the junior employees instead.

The gist of Carrier's overall position is that since the work in question was not work coming within the scope of the Agreement so far as Bridge and Building employees are concerned it could assign such work to any employee in that department it desired, regardless of seniority. On the other hand, the employees contend that having elected to call employees within the group mentioned the Carrier is bound to observe seniority in calling the employees within that group. With respect to the two contentions we have little difficulty in concluding the Organization's position must be upheld. Under a long line of well-reasoned decisions, to which we adhere, we have held, with rules such as are involved in the confronting record, that when a Carrier elects to call employees from an established seniority group to perform work of another group, there being no employees holding seniority in the other group available, it is required to take notice of the seniority rights of the men in the group called upon to perform the service. See e.g., Awards 2341, 4841, 4947, 5142 and 5604. The reasons responsible for enunciation of the principle therein set forth and herein followed are set forth at length in such awards and will not be repeated. In fact, this case could be decided solely on what was said and held in Award 5604 involving the same parties and somewhat similar facts and circumstances.

There is no merit to a further contention of Carrier to the effect that since these employees were classified as Mechanics First and Second Class it had a right to select employees in either class and then observe seniority principles in those respective classes. The current Agreement, particularly Rule 2 (b) expressly provides that seniority rights of employees in certain groups will be observed and confined to respective group. Other provisions of the same rule clearly indicate that such was the intention of the parties to the Agreement. Moreover, we note that for seniority purposes subdivision (d) of Rule 2 recognizes but one classification for Bridge and Building Mechanics.

Finally, Carrier seeks to avoid application of the rule to Claimant Martino on the ground he was 70 years of age, and had indicated a preference not to be called for work of the kind here involved. We do not believe the facts of record sustain Carrier's claim this employee had indicated unwillingness to perform day work of such character prior to the date in question, and, of course, in and of itself, the fact he was seventy years old did not disqualify him for service. The very most that can be said of the record on this point is that some two months after the events giving rise to the filing of the claim Martino advised the transportation clerk he did not want to be called for night work.

Since, except as above stated, Carrier makes no claim that either of the Claimants were unfit, disqualified, or unavailable to perform the work in question, we think that under the facts and circumstances of record, as well as the awards heretofore cited, the Carrier was required to call Claimants as senior employees before it used the junior employees in question and that the fact it failed to do so resulted in a violation of the Agreement and requires a sustaining award. However, since Claimants performed no work on February 25, 1950, reparation will be limited to the pro rata rate.

**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 Agreement was violated.

AWARD

Claim sustained at the pro rata rate in accord with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon  
Secretary

Dated at Chicago, Illinois, this 18th day of September, 1952.