

Award No. 6114

Docket No. MW-6032

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Fred W. Messmore, Referee**

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

**ILLINOIS CENTRAL RAILROAD COMPANY**

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

(1) That the Carrier violated the effective agreement when they furloughed Paint Foreman T. M. Millis and assigned painters to work under the supervision of the Carpenter Foreman at Carbondale, Illinois.

(2) That Paint Foreman T. M. Millis be paid the difference between what he received at the painter's rate of pay and what he should have received at the Paint Foreman's rate of pay on the following dates: February 20, 21, 23, 24, 27, 28, March 1, 2, and 3, 1950.

**EMPLOYEES' STATEMENT OF FACTS:** All Painter Foremen and Painters holding seniority on the St. Louis Division, were laid off in force reduction as of January 16, 1950.

T. M. Millis, the No. 1 ranking Painter Foreman and Painter, and Mr. Floyd McIntire, the ranking No. 2 Painter, were included in the employees who were affected by this force reduction.

Effective February 20, 1950, the Carrier assigned two Painters to work under the supervision of Mr. O. S. King, the Bridge and Building Foreman of Crew No. 19. Painter Foreman Millis and Painter McIntire, were assigned to these positions.

On February 20, 21, 23, 24, 27, 28; March 1, 2, and 3, 1950, Mr. Millis and Mr. McIntire performed Painter duties under the supervision of Bridge and Building Foreman King.

Effective March 16, 1950, Mr. Millis was reassigned to his position as Painter Foreman.

A claim was filed in behalf of Foreman Millis wherein the Employees contended that he should have been assigned to supervise the work that was performed in the Painter's class on February 20, 21, 23, 24, 27, 28; March 1, 2 and 3, 1950, in lieu of Bridge and Building Foreman King.

Claim was declined.

**OPINION OF BOARD:** On January 16, 1950, all painter foremen and painters holding seniority on the St. Louis Division were laid off in force reduction. This action included the Claimant, T. M. Millis, the number one ranking foreman and painter, and Mr. Floyd McIntyre, the number two painter. On February 20, 1950, the Carrier required the services of two painters to paint certain items turned out by the forces of the carpenter shop, as well as other painting work. The Carrier states that in compliance with Rule 8 (a), which provides: "When forces are increased senior employees in their respective classifications and seniority districts shall be given preference in employment," it called the Claimant and Mr. McIntyre to do the painting work which they did on the days designated in the claim. On March 16, 1950, Mr. Millis was reassigned to his position as painter foreman.

The position of the Employees is that the Carrier violated the effective Agreement when it assigned painters to work under the supervision of the carpenter foreman at Carbondale, Illinois; that by virtue of the violation of the rules of the Agreement by the Carrier, the Claimant should be paid the difference between what he received at the painter's rate of pay and what he should have received at the foreman-painter rate of pay. The Employees contend that the work in question was supervised by Bridge and Building Foreman O. S. King, who did not hold seniority in the Paint Sub-Department. In support of this contention reference is made to certain rules contained in the effective Agreement between the parties.

Rule No. 2 deals with seniority. Under this rule it is indicated that the Bridge and Building employees are in a separate and distinct sub-department than that of the paint department employees.

Rule 8 (a) and (b) is set out, which, in substance, requires that senior employees in the respective classifications will be given preference when forces are increased, it being contended that the rule does not imply that employees of one class may be called back into service to perform services under the supervision of an employee in another class.

Rule 14 (a) is cited, dealing with seniority rosters. It provides in substance that rosters of each sub-department will be separately compiled, hence bridge and building department employees are separate from the paint department employees and have no right to perform work allocated to the painters in the paint department.

The above rules are primarily the rules alleged to have been violated by the Carrier in this dispute.

It appears from the record that a portion of this painting work was performed on various equipment constructed or repaired by forces in the carpenter shop, the carpenter shop being under the supervision of Bridge and Building Foreman O. S. King. The painting work is set forth in the record, and some of it was done at different places on the Carrier's property. Certain items of equipment of the Carrier are painted a standard color. Standard stock is carried, and is always available in sufficient quantities for current requirements.

The Carrier asserts, inasmuch as no paint gang was used, the usual time books were not needed. Consequently, in order to put these employees on some payroll, the Bridge and Building Foreman was instructed only to carry them on his payroll and keep a record of the material (paint) used, and the time devoted to each project. Further, that by a letter written April 11, 1952, by the Supervisor of Bridge and Building to the Carrier's Superintendent, to the effect that he talked to the Claimant before he was recalled from furlough, and told him some painting had to be done on work which the Carrier's shops was turning out and various odd jobs; that Bridge and Building Foreman King was not instructed to supervise the work performed by the Claimant and painter McIntyre; and that no check was made by Bridge and Building Foreman King as to whether or not the painting work

was properly and expeditiously done, the inspection made by Bridge and Building Supervisor White on his trips on the Division being sufficient for that purpose. In addition, much of this painting work was done miles distant from the carpenter shop in which Bridge and Building Foreman King was employed.

We believe the important question to determine in this case is whether or not Bridge and Building Foreman King supervised the work of the Claimant, as contended for by the Employees. In this connection, according to the Century Dictionary a supervisor is one who supervises; an overseer; an inspector. "Supervision," as defined by Webster, means the act of overseeing; inspection; or superintendence. To supervise is to oversee; to have oversight of; to superintend the execution or performance of a thing, or movement or work of a person; to inspect and direct the work of others.

As we view the evidence in conjunction with the definitions heretofore cited, we conclude that Bridge and Building Foreman King did not supervise the work of these painters.

There are numerous awards of this Division which hold the burden of establishing a claim is upon the one who asserts it, that is, the burden of establishing facts sufficient to require or permit the allowance of a claim is upon him who seeks the allowance. See Awards 4011, 2577, 5445.

We have examined the record for the purpose of determining the sufficiency of the evidence to enable us to say the Claimant has established to our satisfaction the proof of the claim. The facts of the record indicate that the Employees have failed to sustain this burden.

In the light of what we have said, other contentions of the respective parties need not be discussed.

For the reasons given herein, we conclude the claim should be denied.

**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 claim shall be denied.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon  
Secretary

Dated at Chicago, Illinois, this 26th day of February, 1953.