

Award No. 6423
Docket No. MW-6521

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Emmett Ferguson, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
ALABAMA, TENNESSEE AND NORTHERN
RAILROAD COMPANY**

STATEMENT OF CLAIM: (1) That the Carrier violated the effective agreement when they failed to credit Mr. J. R. Moseley with a seniority date as first-class Bridge and Building Laborer as of August 16, 1949, on the 1952 seniority roster;

(2) That the Carrier violated the effective agreement when they failed to assign Mr. J. R. Moseley to the position of Bridge and Building Inspector as of May 15, 1951;

(3) That the 1952 seniority roster be corrected to credit Mr. J. R. Moseley with a seniority date as first-class Bridge and Building Laborer as of August 16, 1949;

(4) That Mr. J. R. Moseley be assigned to the position of Bridge and Building Inspector and compensated for the difference between the rate of pay he has received subsequent to May 15, 1951, and the rate of pay he should have received as Bridge and Building Inspector.

EMPLOYEES' STATEMENT OF FACTS: Under date of April 28, 1951, the following bulletin was issued by the Carrier:

**"ALABAMA, TENNESSEE AND NORTHERN RAILROAD
COMPANY**

York, Alabama
April 28, 1951

Bulletin No. 68

Vacancy exists April 28 for Bridge and Building Inspector, Mobile to Reform, at pay rate of \$306.38 per month.

Bids will be received up to and including May 8, 1951.

G. A. Honey

GAH/lis

cc: Mr. A. E. Hoehle
Mr. G. L. Harris
Mr. M. C. Plunk
Mr. W. H. Underwood
All Foremen."

has been on military leave of absence account inducted into the armed services of the United States. Also, Mr. W. B. Jenkins, who was awarded the Bridge and Building Inspector position on May 15, 1951, was displaced from the position on March 3, 1952 when B&B Foreman George Taylor exercised seniority rights to the position after his position as B&B Foreman on Gang #4 was abolished.

The Board will observe from Carrier's Exhibit "H" that Mr. Taylor has seniority in the B&B Department as laborer dating from June 1, 1929, as assistant foreman dating from January 1, 1948 and as foreman dating from September 8, 1950. Any claim, monetary or otherwise, that Mr. Moseley may have under the agreement should be limited to March 3, 1952, when an employee senior to both Messrs. Jenkins and Moseley exercised seniority displacement rights to the Bridge and Building Inspector positions.

All data submitted in support of Carrier's position have been presented to the employees and made a part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: J. R. Moseley, the claimant herein, was hired August 15, 1949, as a second class B&B laborer. The seniority roster dated January 24, 1951, established Moseley as a first class B&B laborer, with the date of August 16, 1949. On April 28, 1951, under this set of circumstances, the position of B&B inspector was posted for bids. Moseley bid on the job and so did W. B. Jenkins, whose name as a first class B&B laborer appeared on that same roster, but without any date showing when he acquired such status. Jenkins was awarded the job. The Organization protested prior to July 23, 1951, as shown by the Division Engineer's answer of that date, wherein he stated that, "Jenkins had the greater ability." It was some time after the local Carrier officials had denied the Organization's claim that the Carrier discovered the error on the January 24, 1951, roster which was changed on the January 8, 1952, roster.

Thus it appears, as admitted by the Carrier, that at the time the assignment was made, Carrier was of the opinion that Moseley was the senior bidder and further, that Jenkins was given the job because of his greater ability.

If the job assignment had been made according to the current roster, Mr. Jenkins could have protested because of any error made on the roster in placing Mr. Moseley ahead of him.

We are of the opinion that the claim should be decided on the same facts as existed at the time the Carrier made the assignment of April 28, 1951, and not on errors discovered later, and corrected still later, after submission to this Division had been requested by the Organization.

It is noted also, that as of April 28, 1951, Moseley and Jenkins were working in the same classification of first class laborer. It is a safe assumption that both had sufficient ability to perform that job and in that respect at least were equal. The Carrier then compared their respective abilities, and as shown by the Division Engineer's letter, determined that Jenkins had greater ability; but the Carrier significantly failed to establish that Moseley did not have sufficient ability".

We conclude that the assignment made was erroneous on two grounds. First, Moseley then had the greatest seniority of record, and Second, the Carrier never did decide that Moseley did not have "sufficient ability".

As to Claims (1) and (3), we do not decide whether the Carrier had the right to change Moseley's seniority on the roster of January 8, 1952. That is a collateral issue which was created after the grievance was in progress on the property and headed toward this Division. There are not

enough facts before us to establish definitely whether an error was committed, but we observe that the Organization did not argue against the correctness of the time slips offered by the Carrier in the instant submission.

As to Claims (2) and (4), we are of the opinion that the Carrier erred in failing to assign Mr. Moseley to the inspector's job May 15, 1951, and that he should be compensated for the difference between the rate of pay he received after that date, and the rate of pay of the inspector's job, until March 3, 1952, when Jenkins was displaced by Foreman Taylor whose seniority was superior to both Moseley and Jenkins.

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 Moseley had the greater seniority of record at the time of the assignment, and

That it was not determined that he did not have sufficient ability, and

That he was entitled to occupy the position and should be awarded the difference in pay between B&B first class laborer and B&B inspector from May 15, 1951 until March 3, 1952.

AWARD

Sustained as per Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 30th day of November, 1953.