

Award No. 9434

Docket No. MW-8079

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Thomas C. Begley, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
THE DELAWARE AND HUDSON RAILROAD CORPORATION**

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

(1) The Carrier violated the effective Agreement when it failed to assign Plumber Helper Maurice Corbiere to perform plumber's work on November 10, 1953 and, in lieu thereof, assigned the work to a junior Plumber Helper:

(2) Plumber Helper Maurice Corbiere be allowed the exact amount of monetary loss suffered because of the violation referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: On Tuesday, November 10, 1953, the Carrier assigned junior Plumber Helper Hubert Wells to perform eight (8) hours of work as a Plumber on the Champlain Division and paid him at the applicable Plumber's rate.

Senior Plumber Helper Maurice Corbiere was available and capable of performing the required work, had the Carrier notified or instructed him accordingly.

Claim for pay for the difference between what claimant Corbiere did receive at the Plumber Helper's rate and what he would have received had he been permitted to perform Plumber's work in accordance with his seniority rights was filed and the Carrier has denied the claim.

The Agreement in effect between the two parties to this dispute dated November 15, 1943, together with supplements, amendments, and interpretations thereto are by reference made a part of this Statement of Facts.

EMPLOYEES' POSITION: It is the position of the Employees that on November 10, 1953, senior Plumber Helper Corbiere (claimant) was available and was capable of performing the required work, had he been given an opportunity to do so. Claimant Corbiere has previously and subsequently performed Plumber's work for which service he was paid at the applicable Plumber's rate. The Employees contend that when the Carrier failed to permit claimant

Management affirmatively states that all matters referred to in the foregoing have been discussed with the committee and made part of the particular question in dispute.

OPINION OF BOARD: The Employes state that the Carrier failed to assign the claimant, Plumber Helper Maurice Corbiere, to perform plumbers' work on November 10, 1953, and, in lieu thereof, assigned the work to junior Plumber Helper, Hubert Wells. The claimant was available and capable of performing the required work had he been given an opportunity to do so. He was deprived of the work and the earnings to which he was justly entitled by reason of his seniority. That the Carrier violated Rules 1(c) and (b), 2, 18, 27(a) and (b).

On November 9, 1953, the acting Plumber Foreman, James Dominic, took Plumber Helper Wells to Ticonderoga, New York, to make repairs to freight house stoker. In the course of making these repairs they found that they would have to replace some parts. That the parts were ordered and that on November 10, 1953, acting Plumber Foreman, Dominic, sent Plumber Helper Wells back to Ticonderoga alone to finish the repairs on the stoker and that his reason for sending Wells, instead of the senior employe Corbiere, was because Wells had a car and it was not a matter of qualification. Claimant Corbiere could have made the repairs to the stoker. Acting Plumber Foreman Dominic's statement reads as follows:

"Plattsburg, New York

"To Whom It May Concern:

"In the Claim of Maurice Corbiere, Plumber Helper,
Gang No. 4 Plattsburg, New York.

"On November 9, 1953, I, Plumber, James Dominic, who was acting Plumber Foreman and Plumber Helper Hubert Wells were sent to Ticonderoga, New York, to make repairs to Freight House stoker. And on November 10, 1953, Hubert Wells alone returned to Ticonderoga to finish repairs on stoker. My reason for sending Wells instead of Corbiere is that Wells had a car and it was not a matter of qualified Corbiere could have made repairs to stoker.

/s/ James Dominic"

The Carrier states that acting Plumber Foreman Dominic and Plumber Helper Wells were sent to Ticonderoga, New York from Plattsburg, a distance of 68 miles, to repair a stoker and because certain replacement parts were not available at Ticonderoga and had to be obtained from Plattsburg, it was not possible to complete the re-assembly of this stoker on November 9, 1953. The parts were picked up by Plumber Helper Wells on the following day and, according to instruction, he proceeded back to Ticonderoga to complete the repair job he and Foreman Dominic started but abandoned on the previous day. For this work, because it involved the performance of some higher rated plumbing work, Wells was paid the plumber rate for the day.

The Carrier states that the rules cited by the Organization are seniority rules and rules which involve right to positions and vacancies; that no position or vacancy was involved in the instant case; it was simply an assignment of work to re-assemble a stoker which plumber and junior helper had started to repair the pervious day.

The Carrier further states that the claimant was not qualified for this work and that as a junior helper had been used to dismantle the stoker with the plumber on the previous day, obviously he would be more familiar with its re-assembly than someone like the claimant who had never worked on that kind of stoker.

The Carrier also states that the work consisted of an emergency. The Carrier further states that the rules of the Agreement do not require them to observe seniority when making an assignment of higher rate of work which is to be performed by an employee along with his regular assigned duties and during his regular assigned hours.

The Carrier submitted into evidence a sworn statement of Edward M. Pearce, the Plumber Foreman of Gang No. 4, Plattsburg, New York, who was on vacation on November 10, 1953. His statement reads as follows:

"Plattsburg, N. Y.
February 24, 1954

"To Whom it May Concern.

In the case of Maurice Corbiere Plumber Helper Gang #4, Plattsburg, he is as you know senior helper and consequently entitled to all extra time such as Riding Time and overtime as his seniority called for and so has been assigned accordingly.

"As you know I usually do most of the stoker work myself so as a result the youngest Plumber Helper usually accompany's on these various jobs.

"On November. 9-1-53 I was on my vacation when the trouble occurred at Ticonderoga Freight office. It is my belief that sending H. H. Wells was about the only thing that could have been done. As I have previously stated I don't believe that Maurice Corbiere has had experience enough to repair the above mentioned stoker. If I can recall correctly do not believe he had ever worked on this stoker.

"I do not want to take anything away from Mr. Corbiere because any work he can do he does very well and is very thorough about doing it. But in this case I do not think he could have repaired the stoker at Ticonderoga on Nov. 10, 1953 alone.

/s/ Edward M. Pearce
Plumber Foreman
Gang #4 Plattsburg, N. Y.

"Witness: /s/ James M. Lucy
B. & B. Supervisor

"Sworn and subscribed to before me this 24 day of February 1954

/s/ Raymond F. La Chapelle
Notary Public"

There is a conflict in the record as to the ability of the claimant to perform the stoker repair work in question. Edward M. Pearce the Plumber Foreman, who was on vacation on the date of claim does not emphatically

state that the claimant did not have the ability to perform this work. However, the acting Plumber Foreman Dominic, does state emphatically that the claimant did have the ability to perform the work, but that the only reason that Wells was sent back to Ticonderoga on November 10, 1953, to finish the stoker repair work was due to the fact that he owned an automobile. He does state that the claimant could have made repairs to the stoker.

On claim date there was a plumber vacancy at Ticonderoga. The rules of the Agreement between this Organization and the Carrier state in Rule 1, how seniority shall be acquired and Rule 27 states how temporary vacancies shall be filled, and this was a temporary vacancy on November 10, 1953. Rule 18 states what rate of pay shall be given to an employe who performs a higher rated position and because there is no doubt that the claimant was senior to Wells and there being no showing by the Carrier that this claimant could not have performed the re-assembling of this stoker, we find that the Carrier did violate the Agreement and the claim should be allowed.

The claim should be allowed for the difference in the plumber helper rate received by the claimant on November 10, 1953, and the plumber rate he should have received had the Carrier not violated the agreement on that date.

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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of May, 1960.