

Award No. 5036
Docket No. 4933
2-CofG-MA-'67

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Harold M. Weston when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 26, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Machinists)**

CENTRAL OF GEORGIA RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. The Central of Georgia Railway Company violated the Agreement when it removed from the January 1, 1964, seniority roster the following Machinist Helpers and Apprentice holding seniority rights at Savannah, Georgia:

1. H. Williams—Machinist Helper
2. W. Grady—Machinist Helper
3. J. Ferguson—Machinist Helper
4. C. Singleton—Machinist Helper
5. E. J. Gibson—Machinist Helper
6. W. Moody—Machinist Helper
7. J. Gant—Machinist Helper
8. A. Jackson, Jr.—Machinist Helper
9. J. Edwards—Machinist Helper
10. O. Bryant—Machinist Helper
11. J. Mobley—Machinist Helper
12. E. J. Harris—Machinist Helper
13. G. S. Watson—Machinist Helper
14. J. S. Warren—Machinist Apprentice

2. The Carrier be ordered to list such employes on the seniority roster for 1964 and thereafter.

EMPLOYEES' STATEMENT OF FACTS: Savannah, Georgia, is a division point of the Central of Georgia Railway Company, hereinafter referred to as the carrier. As far back as there has been an agreement in existence between the Central of Georgia Railway Company and System Federation No. 26, the carrier has employed members of the machinist's craft at Savannah, Georgia.

Throughout the years up until January 1, 1964, the carrier posted a seniority roster showing the names of these who held an employment relationship with the Carrier, whether they were actively employed, laid off or out of serv-

"* * * it is incumbent upon the Petitioner to show by clear and specific proof that the duties and responsibilities of the two positions are substantially the same."

Third Division Award 9783, Referee Fleming:

"Award 7350 (Coffey). 'The Statement of Claim amounts to no more than the allegation that the contract has been or is being violated. It is not evidence. The charge, as laid, must be supported by fact. On this theory that the one affirmatively charging a violation is the moving party, and, therefore, should be in possession of the essential facts to support the charge before making it, this Division of the Board is committed to the so-called "burden of proof" doctrine.' While any facts that may assist in arriving at a proper conclusion may be considered, the Organization has not made a showing here than the Yardmasters performed four hours or more work per day. The claim should be denied."

Third Division Award 9788, Referee Fleming:

"* * * Furthermore, the claim must fail for lack of proof. Mere assertions and conclusions are not sufficient to substantiate a claim."
Third Division Award 8838, Referee Donald F. McMahon:

"* * * It has consistently been held by this Division that the burden of proof is upon the claimant and the Organization to show beyond a reasonable doubt that the Carrier has violated the agreement."
(Emphasis added)

Third Division Award 8768, Referee Donald F. McMahon:

"The Board is of the opinion that from a review of the record before us, the facts submitted are not sufficient to support a sustaining award."

Third Division Award 8430, Referee Carroll R. Daugherty:

"From a study of the whole record the Board is forced to conclude that the Employes have failed to support their contention. That is, the Carrier's decision not to assign Claimant to the new position is not found to have had such an arbitrary, capricious or unreasonable basis as to have constituted a clear abuse of managerial discretion and as to justify this Board now to substitute its own judgment for that of the Carrier. * * *" (Underscoring added)

And there are numerous other awards of all four divisions of your Board concerning the burden of proof doctrine. To date, the organization has failed to prove that the agreement was violated.

In view of all the facts and circumstances shown by the carrier in this submission, carrier request the board to deny, in its entirety, this baseless claim. The claim clearly is not supported by any rule, interpretation or practice.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Petitioner contends that Carrier violated the Agreement by omitting the names of machinist helpers and a machinist apprentice from the 1964 seniority roster for the Savannah, Georgia Shops beginning January 1, 1964.

It appears that shop craft operations had been discontinued at Savannah and the positions in question abolished. Under the circumstances, Carrier will not be required to continue to post seniority rosters at locations where shop craft employes are no longer employed. It will be directed, however, to furnish the Organization with an accurate up-to-date seniority roster listing all employes who have not been removed from Carrier's service by resignation, death, retirement or application of agreement rules. This disposition, in our opinion, is compatible with the terms of Rule 29, the controlling provision of the parties' Agreement, and with the practicalities of the situation.

AWARD

Claim disposed of in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 31st day of January, 1967.