

Award No. 4601

Docket No. 4463

2-CofG.CM-'64

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee J. Harvey Daly when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 26, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L.-C. I. O. (Carmen)**

CENTRAL OF GEORGIA RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That Carrier violated the controlling Agreement on September 9, 1961, when it used Foreman Carey Williamson to make repairs to CG 12584 on line of road at Americus, Georgia.

2. That accordingly, Carman W. L. Wells, of Macon, Georgia be additionally compensated for six (6) hours pay at overtime rate.

EMPLOYES STATEMENT OF FACTS: On September 9, 1961, the Central of Georgia Railway Company hereinafter referred to as the carrier, used Foreman Carey (C. K.) Williamson of Albany, Georgia, some 36 miles distant to repair a broken train line on CG 12584. Americus is an intermediate station, between Albany, Georgia and Macon, Georgia, and there are no carmen, or other shop craft mechanics, employed there, nor has there been in decades. Carman W. L. Wells, herinafter referred to as the Claimant, is regularly employed at Macon, Georgia, the main shop point, was first out on the overtime board for road trips, was able, willing and available to have made this road trip had he been called. This dispute has been handled with all officers of the carrier designated to handle such matters, including the highest designated officer of the carrier, all of whom have failed to make satisfactory adjustment.

The Agreement of September 1, 1949, as subsequently, is controlling.

POSITION OF EMPLOYES: It is the position of the employees that the carrier violated Rule 117, which reads:

"CARMEN'S WORK AWAY FROM SHOPS

Carmen will be sent to inspect and repair cars on line of road or

through the years, have interpreted the Agreement to mean."

"AWARD

"Claim denied."

(Emphasis ours)

THE BURDEN OF PROOF RESTS SQUARELY UPON THE PETITIONERS.

It is elementary that one charging a violation of the agreement, must prove the charge. Mere unsupported allegations do not constitute proof. On this point, see the following awards:

Second Division Award No. 3576, Referee Lloyd H. Bailer:

"As the initiator of the claim, the Organization has not met the responsibility to make a presentation which, if accepted with respect to the theory advanced, will enable this Board to render a final and definitive award."

Also see Second Division Awards 3345, 3246, 3080, 2938, 2918, 2580, 2569, 2545, 2544, 2042, 1996, and others. Also see Third Division Awards 10324, 10201, 9963, 9961, 9783, 9788, 8838, 8768, 8430, 8172, 7964, 7908, 7861, 7584, 7226, 7200, 7199, 6964, and many others. 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 Ex Parte Submission, carrier respectfully requests 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 employees 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 were given due notice of hearing thereon.

On September 9, 1961, the Carrier directed Working Foreman Carey Williamson, who was headquartered at Albany, Georgia, to make a 36 mile road trip to Americus, Georgia, to repair a broken train line on Freight Car CG 12584.

There are no Carmen employed at Americus or at Albany nor are there any Foremen employed at Americus.

The Organization contends that the work in question should have been assigned to the Claimant, Carman W. L. Wells, who is regularly employed at Macon, Georgia, which point is some 70 miles from Americus.

The Organization further contends that the Claimant "was able, willing and available to have made this road trip had he been called" and that the

carrier's action violated Rule 117 of the controlling Labor Agreement.

The Carrier's position is that "The work claimed has never belong exclusively to the Carmen . . ."; "that Working Foremen have performed the work "in question since at least as far back as 1939 at points where there were not mechanics employed; and that General Rule 30 of the controlling Labor Agreement supports the Carrier's position."

The Carrier further claims that Foreman Williamson has system seniority; and that train crews, carmen and working foremen have performed the work in question at points where no mechanics are employed.

The pertinent parts of the principal rules involved are as follows:

"RULE 30 ASSIGNMENT OF WORK

"None but mechanics or apprentices regularly employed as such shall do mechanics' work as per special rules of each craft, except foreman at points where no mechanics are employed."

"RULE 117 CARMEN'S WORK AWAY FROM SHOPS

"Carmen will be sent to inspect and repair cars on line of road or away from shops. Helpers may be assigned to help carmen when necessary in the performance of this work."

"RULE 132 APPLICATION OF RULE

"Except as provided for under the special rules of each craft, the General Rules shall govern in all cases."

General Rule 30 is the controlling rule in this case. Its simple and unambiguous language not only gives recognition to "special rules" in the Controlling Labor Agreement but also cites the exception under which the "Special rules" are not operative—as evidenced by the following language:

"None but mechanics . . . shall do mechanics' work as per special rules of each craft, except foremen at points where no mechanics are employed." (Emphasis ours)

Consequently, the facts set forth in the record indicate that the Carrier did not violate the controlling Labor Agreement and we must deny the Organization's claim.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: William B. Jones
Chairman
E. J. McDermott
Vice Chairman

Dated at Chicago, Illinois, this 9th day of December, 1964.

DISSENT OF LABOR MEMBERS TO AWARD No. 4601

We do not agree that Rule 30 is the controlling rule in this case. The exception under which the Special Rules "are not operative" is not applicable. Special Rule 117 is controlling.

The majority admits that "There are no Carmen employed at Americus or at Albany nor are there any Foremen employed at Americus," yet upholds the carrier in sending a foreman to perform the instant work in violation of Rule 117 which requires that "Carmen will be sent to inspect and repair cars on line of road or away from shops . . ."

E. J. McDermott

C. E. Bagwell

T. E. Losey

R. E. Stenzinger

J. B. Zink