

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Sidney St. F. Thaxter, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
CENTRAL OF GEORGIA RAILWAY

STATEMENT OF CLAIM: "Claim of Employees' Committee: first, that Carrier violated agreement in effect by not assigning a foreman to a paint gang employed on the Savannah Division.

Second, that Ben Buie, the senior Painter Foreman not employed as such, should have been assigned as foreman to that gang.

Third, that Ben Buie be paid the difference between what he has earned as Division Sign Painter and that which he would have earned as Painter Foreman retroactive to December 1, 1937."

EMPLOYEES' STATEMENT OF FACTS: "Prior to December 1, 1937, the Carrier maintained a so-called Utility Gang in the Savannah Terminals consisting of some carpenters, tanners, plumbers and approximately six painters. This Utility Gang was in charge of a foreman.

"Prior to December 1, 1937, as well as since, the Carrier maintained a supervisory officer in the Savannah Terminals classified as a General Foreman. His title has since been reclassified to that of Assistant B. & B. Supervisor. This officer was in charge of all of the B. & B. gangs in the Savannah Terminals including the Utility Gang above referred to.

"Effective as of December 1, 1937, the position of foreman of the Utility Gang above referred to was discontinued. After that date the painters were required to report to the General Foreman. In other words, the paint gang of from three to six men has been operating without a foreman.

"Agreement in effect between the Central of Georgia Railway and the Brotherhood of Maintenance of Way Employees, effective as of January 1, 1937, is by inference made part of this Statement of Facts."

POSITION OF EMPLOYEES: "Agreement in effect between the Carrier and the Brotherhood of Maintenance of Way Employees governs the rules of service, working conditions, and rates of pay of all employees in the Maintenance of Way Department, including painter foreman. Rule 36 of agreement in effect fixing rates of pay reads in part:

'Bridge, Building, Painting and Concrete Foremen—\$162.50 per month' (effective as of August 1, 1937—\$172.70 per month).

Rule 34 of current agreement defines the set up of a Bridge and Building Gang, reading:

gang (detached from the regular gang) who remain on the Savannah Terminals until such time as the regular paint gang is returned from the line of road for the Winter months, which practice has been in effect since December 1st, 1937, without protest from the Maintenance of Way Organization until August, 1940, at which time the position of Division Sign Painter held by Ben Buie was temporarily abolished."

OPINION OF BOARD: In this case there is no serious dispute as to the facts. For a period of at least seven years prior to December 1, 1937, a utility gang composed of carpenters, painters, plumbers, tinnerns, and laborers worked under a bridge and building foreman in the Savannah Terminals of the Carrier.

The Committee does not claim that there was any violation of the agreement in such practice. December 1, 1937, the position of foreman was abolished and the men in the gang thereafter came under the supervision of a general foreman who was not covered by the agreement. That this constituted a violation of the agreement seems clear. Award 490. On the same date the claimant who had been with the gang as assistant painter foreman was assigned to the job of division sign painter on the Savannah Division. He accepted this new position and continued in it without protest until shortly before the filing of this claim, three years later.

We feel that the procedure followed in a somewhat analogous situation, Award 1096, should be adopted here, and that insofar as we sustain the claim we should do so without awarding reparations. Furthermore, on the record before us we see no reason why a foreman should have been assigned over the employes in each separate craft composing the gang,—a result which would seem necessarily to follow if we should sustain the second claim and hold that a foreman should have been assigned to the painters.

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 employe involved in this dispute are respectively carrier and employe 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 first claim is sustained to the extent that the Carrier violated the agreement by placing in charge of the utility gang a general foreman who was not covered by the agreement. The other claims should be denied.

AWARD

Claim one sustained in conformity with the Opinion of the Board. Claims two and three are denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 9th day of July, 1941.