

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS

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

(1) That the Carrier violated the Agreement on October 3, 1947, by allowing Foreman R. L. Owens to displace Foreman Douglas Ferguson from his position as Section Foreman at Savanna, Oklahoma;

(2) That Foreman Douglas Ferguson be returned to his position as Section Foreman at Savanna, Oklahoma, from which he was improperly displaced on October 3, 1947;

(3) That Foreman Douglas Ferguson be reimbursed for all time lost as a Foreman because of this improper displacement, less his earnings in any lower class for which he has already been paid;

(4) That Foreman Douglas Ferguson be paid his expenses for meals and lodging incurred during the period November 1 to November 18, 1947, inclusive, while he was working at Vinita, Oklahoma, by direction of the Carrier, and be paid for any other meals and lodging expenses incurred because of his working away from Savanna, Oklahoma, until such time as he is returned to his regular position as Section Foreman at Savanna.

EMPLOYEES' STATEMENT OF FACTS: Prior to October 3, 1947 Mr. Douglas Ferguson was regularly assigned as Section Foreman at Savanna, Oklahoma. But on that date, October 3rd, the Carrier allowed Section Foreman R. L. Owens to displace Foreman Ferguson.

Foreman Ferguson made his home at Savanna, Oklahoma.

Under date of October 9, 1947 Foreman Ferguson wired Division Engineer L. R. Deavers as follows:

"10-9-47
Savanna, Okla.

L. R. Deavers—Muskogee

As I am being displaced as Foreman at Savanna, I would like to displace the young Foreman on the Southern District regardless of duration of time the job might be.

(s) Douglas Ferguson"

Based on the facts and evidence as shown herein the proposed settlement of the Carrier in handling this case on the property for the payment of the difference between foreman's and laborer's rate of pay for period October 3 to 31, 1947, inclusive to Mr. Ferguson is entirely fair, just and reasonable, and in all other respects the Carrier submits the claim for loss of time or earnings and expenses for meals and lodging subsequent to November 1, 1947 is not supported or justified and should be denied or dismissed in accordance with the Carrier's position.

Except as expressly admitted herein, the Carrier denies each and every, all and singular, the allegations of Petitioner's claim, original submission and any and all subsequent pleadings.

(Exhibits not reproduced.)

OPINION OF BOARD: On October 3, 1947, Douglas Ferguson was the regularly assigned Section Foreman at Savanna, Oklahoma. On this date, Carrier permitted Section Foreman Owens to displace Ferguson, a foreman junior to Owens. On October 9, 1947, Ferguson requested the Carrier that he be permitted to displace the foreman with the least seniority in the district. On November 1, 1947, Ferguson displaced A. C. Rodriguez at Vinita, Oklahoma. On November 20, 1947, Ferguson was displaced by K. C. Nichols, a foreman senior to him, and Ferguson returned to Savanna as laborer. Numerous subsequent shifts of the foremen heretofore mentioned were made which do not appear to control the result of the controversy before us.

The applicable rule states in part:

"When force is reduced, employes shall have the right before displacing lower classified employes to displace only classified employes in the same rank or rate with the least seniority on their respective districts." Rule 2, Art. 3, Current Agreement.

It is clear that under this provision Foreman Owens should have displaced Foreman Rodriguez at Vinita, instead of Foreman Ferguson at Savanna, Rodriguez being the foreman with the least seniority in the district. This being true, Ferguson is entitled to be paid as a foreman from the time he was wrongfully displaced on October 3, 1947, until he was returned to work as a foreman on November 1, 1947.

The Organization contends that Foreman Ferguson should be returned to his position as foreman at Savanna and be compensated as such until he is properly displaced after resuming the position. We do not concur with this view. On November 20, 1947, Ferguson was displaced by a senior foreman as the foreman with the least seniority in the district. After that date, Ferguson suffered no wage loss as the result of the Carrier's error in displacing Ferguson with Owens on October 3, 1947.

The Organization contends that Ferguson should be paid his expenses while occupying the position of Section Foreman at Vinita from November 1, 1947 to November 20, 1947. This is on the ground that, but for his wrongful displacement at Savanna, he would have remained there and had no away-from-home expense. The only rule authorizing payment for meals and lodging is Article 11, Rule 3, Current Agreement. The case before us involves no such situation. In the absence of a rule authorizing the payment of expenses resulting from a wrongful displacement, we know of no way by which they can properly be allowed. The loss under the Agreement is the difference between the amount earned during the period and the rate of pay of the position he would have occupied if the Agreement had been correctly applied.

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

That both parties to this dispute waived oral hearing thereon;

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 Agreement was violated.

. AWARD

Claim (1) sustained. Claim (2) denied. Claim (3) sustained from October 3, 1947 to November 1, 1947. Claim (4) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 30th day of June, 1949.