

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Adolph E. Wenke, Referee

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES**  
**SOUTHERN RAILWAY COMPANY**

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

(1) That the Carrier violated the Agreement by laying off for one day, Saturday, October 18, 1947, the entire Section Crew at Saragossa, Alabama;

(2) That Section Laborers C. A. Speegle, A. L. Speegle, O. Latham, C. Speegle, J. Harbin, and W. Smith be now paid one day's pay at their respective rates, then in effect, account of the Carrier's improper action referred to in Part (1) of this claim.

**EMPLOYEES' STATEMENT OF FACTS:** Mr. J. O. Frederick was on October 18, 1947 the regularly assigned foreman of the Section at Saragossa, Alabama.

Previous to that date he had requested that he be given off on Saturday October 18, 1947. His request was granted. But he was instructed by his Supervisor to lay off his entire crew on that day and thus leave no one working on the Saragossa Section.

As a result, Section Laborers C. A. Speegle, A. L. Speegle, O. Latham, C. Speegle, J. Harbin and W. Smith all members of the Saragossa Section were laid off on Saturday October 18, 1947. They returned to work on Monday October 20, 1947.

These named Section Laborers, the entire crew of the Section Gang at Saragossa, received no compensation for Saturday October 18th.

The Carrier has refused to compensate these Section Laborers for the time lost on Saturday October 18, 1947.

Agreement dated August 1, 1947, and subsequent amendments and interpretations are by reference made a part of this Statement of Facts.

**POSITION OF EMPLOYEES:** Rule 4 of the "Laborers" Agreement states as follows:

Rights of Laborers—Rule 4:

(a) "Seniority rights of laborers employed on section gangs and on Division extra gangs shall be restricted to their respective gangs except that when force is reduced laborers affected may displace laborers junior in service, in section gangs or Division extra gangs,

usual starting time and place (which they were not required to do) the most they could have received pay for was a minimum of three pro rata hours, and even then they could have been required to perform work during the three hours for which they were to be paid. Eight hours pay, such as is here claimed, though no work was performed, is not guaranteed even when required to report and actually perform service.

Moreover, Rule 40 specifically provides that no compensation will be allowed for work not performed. No work was performed on October 18 by any of the claimants; therefore, under the provisions of Rule 40, the claim is not valid.

This claim simply boils down to a case where the Section Foreman desired to be off one day for some unexplained reason. He gave the Supervisor short notice, and that he might be accommodated, the supervisor permitted him to be absent from his assignment. The Foreman who was accommodated and the laborers who claim pay are all represented for purposes of the Railway Labor Act by the same organization. The same General Chairman represents both groups of employees, and simply because respondent accommodated the Foreman by permitting him to be off on short notice (there was no obligation to permit him to be off) the Brotherhood is attempting to penalize respondent. There is no justification under the rules or in equity for placing a penalty on respondent for being accommodating.

The claim which the Brotherhood is attempting to assert on behalf of the six claimants is wholly without merit and is unsupported by any rule contained within the four corners of the agreement here in evidence. It should, therefore, be denied, and respondent respectfully requests that the Board so decide.

(Exhibits not reproduced.)

**OPINION OF BOARD:** The System Committee of the Brotherhood makes this claim in behalf of the six named members of the section crew at Saragossa, Alabama. It contends that Carrier violated their Agreement on October 18, 1947 by laying off the entire section crew for that day. It asks that these men be paid for that day at the rate of pay then in effect for their respective positions.

J. O. Fredericks was, on October 18, 1947, the regularly assigned section foreman at Saragossa, Alabama. He had, prior thereto, requested permission to have that day off. This request was granted but, at the same time, he was directed to lay off his entire crew on that day. This he did and consequently his crew, the claimants here, did not work on October 18, 1947. They returned to work on Monday, October 20, 1947. They were not paid for the 18th.

Rule 35 of the parties' effective Agreement provides:

"Gangs will not be laid off for short periods when proper reduction of expense can be accomplished by first laying off the junior men."

This rule means that gangs will not be laid off for short periods for the purpose of reducing expenses, if such reductions can be accomplished by laying off junior men. It is a specific rule limiting carrier's right to lay off gangs, when such is done for the purpose of reducing expenses. But that is not the situation before us. What the Carrier did here was not because of any plan for the purpose of reducing expenses. It came about solely by reason of the situation that developed when the Section Foreman took the day off although, of necessity, it did reduce expenses. We do not find the foregoing rule applicable to the situation before us.

Carrier's right of management, as far as these employees are concerned, is restricted only to the extent it has contracted with the Brotherhood to limit itself. Admittedly there is no guarantee rule in the parties' effective Agreement covering the situation before us. In the absence of any rule restricting

its right to do so, and we find none and none has been pointed out that does so, the Carrier had the right to do what it did.

**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 employes involved in this dispute are respectively carrier and employes 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 Carrier has not violated the Agreement.

**AWARD**

Claim denied.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
By Order of Third Division

**ATTEST:**A. I. Tummon  
Acting Secretary

Dated at Chicago, Illinois, this 27th day of July, 1949.