

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul G. Jasper, Referee

**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES  
ATLANTA AND WEST POINT RAILROAD COMPANY**

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

(1) The Carrier violated the effective agreement when they required Railwelders Joe Cumbie and C. B. Pippin to perform the duties of Welder Foreman and compensated them for services rendered at the Railwelder's rate of pay;

(2) The Carrier violated the effective agreement when they required Assistant Welders B. A. Williams and J. W. Langford to perform the duties of Railwelder and compensated them at the Assistant Railwelder's rate of pay;

(3) The Carrier violated the effective agreement when they failed to provide a cook in camp car outfits assigned to Joe Cumbie and B. A. Millians and the camp car outfits assigned to C. B. Pippin and J. W. Langford.

(4) The above referred to Railwelders be paid the difference between what they received at the Railwelder's rate of pay and what they should have received at the Railwelder Foreman's rate of pay retroactive to July 19, 1950;

(5) That the above referred to Assistant Railwelders be paid the difference between what they received as Assistant Railwelders and what they should have received as Railwelders retroactive to July 19, 1950;

(6) That Joe Cumbie and B. A. Millians; C. B. Pippin and J. W. Langford be allowed the salary that would have been paid to cooks had they been properly assigned to each of their respective camp car outfits, said salary of cooks to be equally divided between the individuals assigned to each respective camp car outfit.

**EMPLOYEES' STATEMENT OF FACTS:** The Carrier has established two Welding gangs, each gang consisting of the following personnel: One Foreman Railwelder which the Carrier has improperly designated as "Railwelder," and one Railwelder which the Carrier has improperly designated as "Assistant Railwelder."

A camp car outfit is assigned to each of these welding gangs, but Carrier has consistently refused to provide Cooks as provided under the provisions of Rule 20.

We reserve the right to make further answer if and when we receive copy of Petitioner's submission.

We do not see where the claim as filed has merit and respectfully request it be declined.

All data contained herein has been made available to Petitioner.

**OPINION OF BOARD:** Joe Cumbie bid in the Rail Welder's job on June 3, 1947. C. B. Pippin was employed as a Rail Welder June 19, 1950. J. W. Langford bid in the Rail Welder Helper's position July 12, 1949. B. A. Millians bid in the Rail Welder Helper's position January 1, 1949.

At the time the present Agreement was signed, the Carrier had a 10 man gang welding crew. This gang was cut off in 1946.

In 1947 the Carrier established the positions of Welder and Welder Helper on each Supervisor's district. The two men were furnished a tool car and a combined sleeping and cook car.

Claimants Cumbie and Pippin contend that as Rail Welders they were forced to do the work of Foreman-Railwelder and therefore should be paid as such.

Claimants Langford and Millians contend as Welder Helpers they were forced to do the work of a Rail Welder. They claim pay as a Rail Welder.

All the claimants contend that since a cook car was furnished, a cook should have been with each car, and that the claimants were required to perform cook duties.

Rule 20 provides as follows:

#### "CAMP CARS

"(a) Cooks will be provided by the Railway on camp car outfits. Employees will not be required to live or board on camp cars while located at their home station. Camp cars, however, will be considered their home station.

"(b) Gangs working twelve men or less, including foreman and excluding cook, the cook will be assigned eight (8) hours per day. Gangs working over twelve (12) men, including foreman and excluding cook, the cook will be assigned ten (10) hours per day. Such assignment will be over a total spread not in excess of twelve (12) hours per day.

Gangs working over fifteen (15) men will be provided with an Assistant Cook.

"(c) Camp cars shall be kept in good repair, ceiled and screened. The interior of camp cars shall be painted when needed. It will be the duty of the Foreman to see that cars are kept clean and in order."

Rule 20(a) is definite and is not ambiguous. "Cooks will be provided on camp car outfits"—certainly the rule means what it says. It is not modified by section (b) of the rule. The last cited section provides for a cook assigned eight hours per day where there are 12 men or less. In the claim now before us there are two men to the camp car, so they are under the rule entitled to a cook.

Since a cook was not provided, the men are entitled to be reimbursed for their meals. The number of meals can be ascertained on the property.

From the record the Rail Welder and Rail Welder Helper are each performing their respective duties as such. The record does not reveal that the two men employed as Rail Welders performed the duties as Foremen-Rail-welders nor does the record reveal that the Rail Welder Helpers performed the duties of Rail Welder. The burden of proof was on the claimants. They have not sustained this burden.

As has been often said, the nature of the work performed will determine to what classification the employee will be assigned. From the record we cannot say these men were not properly classified and assigned.

The Carrier further contends that the claims now before this Board, were filed against only the Atlanta and West Point Rail Road Company and therefore the Atlanta and West Point Rail Road Company is the only one that can be bound by this Award. This contention is well taken.

The record reveals that the ex parte submission was against only the Atlanta and West Point Rail Road Company. All notices to the Carrier were sent only to the Atlanta and West Point Rail Road Company. This Company is a separate corporation from The Western Railway of Alabama. The two railroads are separate entities. The claimants were employees of the railroad for which they were working and were paid by separate check from the railroad for which they performed work. The Western Railway of Alabama should have been made a Party to this case.

This Board could not bind The Western Railway of Alabama as they are not before the Board.

**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 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 Rule 20 was violated and the claimants are allowed the reasonable value of their meals while working on the Atlanta and West Point Rail Road.

That the Rules were not violated as to all other claims.

#### AWARD

Claim sustained in part in accordance with this Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon  
Acting Secretary

Dated at Chicago, Illinois, this 7th day of August, 1952.