

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward A. Lynch, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
GEORGIA SOUTHERN AND FLORIDA RAILWAY COMPANY

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

- (1) The Carrier violated the Agreement beginning on November 22, 1954 when it assigned laborers to sight track for a Buff Rail Liner;
- (2) Mr. A. W. Jackson be allowed pay for the difference between laborer's rate and foreman's rate for all time that a laborer is used in sighting track for a Buff Rail Liner.

EMPLOYES' STATEMENT OF FACTS: As is customary throughout the Railroad industry, the responsibility for having track in true and proper line and the responsibility to sight track which is being lined rests with this Carrier's Track Foremen and Assistant Track Foremen. Such responsibility has been inherent to positions of Track Foremen and Assistant Track Foremen on this property ever since this railroad began operating.

In accordance with such time-honored recognition, Claimant A. W. Jackson, while regularly assigned as an Assistant Foreman on Extra Gang No. 7 for some time prior to November 22, 1954, was assigned to sight track which was being lined with the help of a Buff track lining machine. In sighting this track, Claimant used a track lining telescope device which utilizes the basic principles of a surveyor's transit.

However, during the early part of November, 1954, the Carrier took this Buff track lining machine out of service with Extra Gang No. 7 and laid off the operator of the machine and Assistant Foreman A. W. Jackson.

However, beginning on November 22, 1954, the Carrier placed the Buff track lining machine back in service with a regular operator but failed to recall claimant Jackson to perform the duties of an Assistant Foreman in sighting track for this Buff Track Lining Machine. In place of the claimant Assistant Foreman to sight track for true and proper track alignment the Carrier used Laborer Paul Reeves.

Claim as set forth herein was filed; the Carrier declining the claim.

All evidence herein submitted in support of Carrier's position is known to employe representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: Carrier states that "The track lining machine and Buff Realign Instrument were first used on the GS&F on December 1, 1953. At that time the only employe in the gang properly qualified to use the Buff Realign Instrument was an assistant foreman. He was, therefore, utilized in assisting the rail lining machine operator in lining the track. Later, however, laborers in the several gangs became qualified, and since November 9, 1955 have been utilized for that purpose. Foremen on the GS&F have never been assigned to assist the track lining machine operator in sighting through the Buff Realign Instrument in lining the track."

While the claim before us alleges a violation of the Agreement "beginning on November 22, 1954" in part 1, and asks, in part 2, compensation "for all time that a laborer is used in sighting track for a Buff Rail Liner," argument presented in behalf of the Organization, noting Carrier's statement above, states that "what happened in November of 1955, even if Carrier is correct, has no bearing on the matter before us."

It is claimed by the Organization, and not denied by Carrier, that Claimant A. W. Jackson, "while regularly assigned as an Assistant Foreman on Extra Gang No. 7, * * * was assigned to sight track which was being lined with the help of a Buff track lining machine."

It is Organization's claim that "during the early part of November, 1954, the Carrier took this Buff track lining machine out of service with Extra Gang No. 7 and laid off the operator of the machine and Assistant Foreman A. W. Jackson," claimant here.

"However," Organization continues, "beginning on November 22, 1954, the Carrier placed the Buff track lining machine back in service with a regular operator but failed to recall claimant Jackson to perform the duties of an Assistant Foreman in sighting track for this Buff Track Lining Machine. In place of the Claimant Assistant Foreman to sight track for true and proper track alignment, the Carrier used Laborer Paul Reeves. * * *

"The Employes therefore contend that when the Carrier unilaterally and arbitrarily assigned the work here in dispute to a Laborer, they were infringing upon the seniority rights of claimant Assistant Foreman Jackson, as established and protected to him under the effective Foreman's Agreement. Claimant Jackson was available on the Division where the instant work was performed. Therefore, the Carrier's failure to utilize claimant Jackson's services as an Assistant Foreman in accordance with his established seniority rights was a definite violation of the effective Foreman's Agreement."

Much of Carrier's defense is its reference to Claimant Jackson as "Laborer" Jackson, and

"The sole issue here presented is whether or not Carrier has contracted to classify laborers utilized in assisting operators of track lining machines as foremen and pay them foreman's rate of pay."

It is quite clear from the record that from the first use of this machine December 1, 1953 until November, 1954 the only employe "utilized" by Carrier "to use the Buff Realign Instrument was an assistant foreman."

It is likewise claimed by the Organization, and not disputed by Carrier, that Claimant Jackson,

"while regularly assigned as an Assistant Foreman on Extra Gang No. 7 for some time prior to November 22, 1954, was assigned to sight track which was being lined with the help of a Buff track lining machine."

So far as this record is concerned, Claimant Jackson is the only person named in it who performed this service, while working as an assistant foreman, from the first use of the Buff machine until November, 1954. Carrier named no other. With reference to the laborers it says "became qualified," Carrier says they "have been utilized" since November 9, 1955. It is Organization's claim, and not denied by Carrier, that Claimant Jackson was laid off "during the early part of November, 1954."

With respect to Carrier's constant reference to Claimant Jackson as "Laborer" Jackson, he exercised his seniority, when laid off in early November, 1954, to a laborer's position. When he filed his claim he no doubt was a "laborer," but this in no way alters the fact of his seniority as, and prior service in the capacity of assistant foreman.

We will, for the reasons herein set forth, as well as Carrier's statement in its final submission to this Board,

"It is significant that while the Brotherhood has argued throughout its submission that the laborer sighting the target on the track lining machine through the Buff Realign Instrument should be classified and paid as foreman, it has not cited any evidence where a foreman has ever been assigned or utilized to sight track through the Buff Realign Instrument. Only Laborers and assistant foremen have been used for this purpose." (Emphasis added.)

sustain part (1) of the claim.

We will, however, deny part (2) of this claim for three reasons:

1. Claimant was not a foreman.
2. Organization did not prove that an assistant foreman is entitled to be paid the rate of a foreman.
3. Assuming it argued for such payment on the basis of an assistant foreman performing some of the duties of a foreman, it would have to do so under the Composite Service Rule, requiring, as is argued in Carrier's behalf, proof of performing work of a higher class and proof that such higher class work was preponderant.

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 the Agreement was violated.

AWARD

Part (1) of claim sustained.

Part (2) of claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 13th day of November, 1958.