

Award No. 12244

Docket No. MW-11653

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

CENTRAL OF GEORGIA RAILWAY COMPANY

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

(1) The Carrier violated the effective Agreement when, on August 28, 1958, Track Supervisor M. C. Chitty instructed two track laborers on the section headquartered at Millen, Georgia to replace a defective rail in Millen Yards with Supervisor Chitty supervising and assisting such track laborers in lieu of Track Foreman E. S. Youmans who is the assigned foreman on this section.

(2) Track Foreman E. S. Youmans now be allowed pay for two hours and thirty minutes at his time and one-half rate because of the violation referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: The Claimant Track Foreman was regularly assigned as such on the section headquartered at Millen, Georgia on the Savannah Division. His gang's regularly assigned hours were from 8:00 A.M. to 4:30 P.M., with thirty minutes out for lunch.

During the overtime hours from 4:30 P.M. to 7:00 P.M. on August 28, 1958 the Carrier used Track Supervisor Chitty, who occupies a position excepted from the scope of this Agreement, to supervise and assist two track laborers, regularly assigned as such on the Claimant's section, in the performance of the work of replacing a defective rail in its Millen Yards.

The Agreement violation was protested and the instant claim was filed in behalf of the Claimant. The claim was declined as well as all subsequent appeals.

The Agreement in effect between the two parties to this dispute dated September 1, 1949, together with supplements, amendments, and interpretations thereto is by reference made a part of this Statement of Facts.

POSITION OF EMPLOYEES: Rule 1, captioned "Scope", reads as follows:

"These rules govern the hours of service, working conditions and rates of pay of employees in the Maintenance of Way and Structures Department, except:

- (1) Claimant was not available since he was 91.8 miles away from the point where the broken rail was replaced;
- (2) The Carrier did **not** violate the effective Maintenance of Way Agreement on August 28, 1958, by Supervisor Chitty telling two laborers to perform their **customary** work in Millen Yard, on their Section No. 2, Carrier's Savannah Division;
- (3) The management has **not** negotiated away its inherent right to determine its supervisory requirements and thus determine when and what amount of supervision is needed in the utilization of laborers or others to perform their day to day work, as in this case;
- (4) Performance of the work in the manner indicated was in conformity with past, accepted and agreed-to practices, all of which is proven by probative evidence;
- (5) The Board is without authority to grant the **new rule** here demanded, and has so recognized in numerous prior awards;
- (6) Claim is clearly **not** supported by the Agreement in evidence; the Board cannot do other than make a denial award.

(Exhibits not reproduced.)

OPINION OF BOARD: On August 28, 1958, Carrier's Track Supervisor, an official outside the coverage of the Agreement, assigned two track laborers to replace a defective rail which he had discovered in the track at Millen, Georgia. The laborers performed the task in two hours and thirty minutes of overtime which was continuous to their regular tour of duty.

There is no dispute that the Track Supervisor told the laborers to perform the work. There is a conflict as to whether the work was performed under the supervision and with the assistance of the Track Supervisor as alleged in the claim. Petitioner averred in the affirmative but failed to adduce any corroborating evidence. Carrier replies that the Track Supervisor merely assigned the laborers and then went about his business elsewhere. The burden of proof was Petitioner's. It failed to satisfy it. We find, therefore, that the Track Supervisor did not supervise and assist the laborers as alleged in the claim.

Inasmuch as Petitioner says that:

"... the sole issue before the Board for adjudication is whether or not the Carrier had the right under the Agreement between the parties to use other than a Track Foreman within the coverage of the Agreement to supervise the performance of work contractually given to employees under the Agreement. Stated another way, was the Carrier in violation of the Agreement requirements when it had, or permitted a Track Supervisor (an official outside the coverage of the Agreement) to perform the service in question?"

and we have found that the Track Supervisor did not supervise or assist in the performance of the work, we will deny the claim.

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 did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of February 1964.