

Award No. 12416
Docket No. MW-11600

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William H. Coburn, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

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 May 10, 1958, Supervisor Brady called Track Laborer R. Bailey to make repairs to switch, Macon Passenger Station, and Supervisor Brady supervised and assisted Track Laborer Bailey in making repairs to said switch in lieu of Track Foreman T. W. Goodrum who is assigned as Foreman on Section No. 1, Macon, Georgia, and who was available, but not called.

(2) The decision by Division Engineer Benson, dated May 22, 1958, was not in conformance with Section 1 (a) of Article V of the August 21, 1954 Agreement.

(3) Because of the violations referred to in Part (1) and (2) of this Statement of Claim, the claim as presented by General Chairman Padgett in a letter dated May 20, 1958, be allowed as presented.

EMPLOYES' STATEMENT OF FACTS: The facts surrounding the presentation of this claim are substantially set forth in the letter of claim presentation (referred to in Part (3) of Statement of Claim) which reads:

"May 20, 1958
File: MD-138

Mr. G. W. Benson, Division Engineer
Central of Georgia Railway Company
Macon, Georgia

Dear Sir:

The System Committee has been requested to file claim as follows:

STATEMENT OF CLAIM:

1. That the Carrier violated the effective agreement when, on May 10, 1958, Supervisor Brady called Track Laborer R. Bailey to make repairs to switch, Macon

'The burden of establishing facts sufficient to require or permit the allowance of a claim is upon him who seeks its allowance.' See Awards 3523, 6018, 5040, 5976."

And there are many more identical awards on this point, such as **Third Division** Nos. 7870, 7718, 7653, 7440, 7422, 7153, 7166, 7101, 7093, 7068, etc.

The Board, having heretofore recognized the limitations placed upon it by law, and that it does not have authority to write new agreements or grant new rules, and will therefore not attempt to further restrict Carrier's rights, there is ample reason for a denial award for this sole reason, if for no other.

CONCLUSION

It having been proven that —

(1) The claim is dead under the Time Limit Rule, Article V of the November 5, 1954 Agreement on the Central of Georgia Railway.

(2) The claim involves work on the property of the **Macon Terminal Company**, which work the petitioners have no agreement to cover.

The agreement between Central of Georgia Railway and the petitioners, here in evidence, is not applicable because it does not now nor has it ever covered work for the Macon Terminal Company.

(3) The Central of Georgia did not violate its Maintenance of Way Agreement on Saturday, May 10, 1958, in having Laborer Bailey perform his customary work of repairing and/or adjusting the switch—even if it had been on Central of Georgia property.

(4) The management has not negotiated away its inherent right to determine its supervisory requirements and thus determine when supervision is needed in the utilization of laborers to repair and/or adjust a switch;

(5) Performance of the work in the manner indicated was in conformity with past, accepted and agreed-to practices on the property of Central of Georgia Railway, all of which is proven by probative evidence;

(6) The Board is without authority to grant the **new Agreement and rule** here demanded, and has so recognized in numerous prior awards;

(7) Claim is clearly not supported by the Central of Georgia Agreement in evidence; the Board cannot do other than make a denial award.

(Exhibits not reproduced.)

OPINION OF BOARD: Article V of the November 5, 1954 Agreement between the parties (Section 1 (a) of Article V of the August 21, 1954 National Agreement) provides, in pertinent part:

" * * * Should any such claim or grievance be disallowed, the carrier shall, within 60 days from the date same is filed, notify whoever filed the claim or grievance (the employe or his representative) in writing of the reasons for such disallowance. If not so notified, the claim or grievance shall be allowed as presented, * * *"
(Emphasis ours.)

The record shows the claim was first declined on the property by the Carrier's Division Engineer by letter to the Organization dated May 22, 1958. After quoting the Statement of Claim, the letter ended with "This is to advise that this claim is declined in it's [sic] entirety." The Organization promptly contended that the language employed failed to meet the requirements of Article V (supra) in that it supplied no reasons for the declination. Therefore, it asserted, the claim had to be allowed under the mandate of the rule. That contention was consistently made at each stage of the progress of the claim, but was never answered by the Carrier.

In view of the foregoing, the Board has no alternative but to sustain the claim. The language of the rule is clear, unambiguous and mandatory. It permits of no exceptions, either express or implied. It is applicable and controlling here.

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 the Agreement of November 5, 1954, was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of April 1964.