

Award No. 12418
Docket No. MW-11640

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 it assigned Mr. C. E. Wallace, who was relieving the regular assigned Apprentice Foreman on the Millen, Georgia Section during the week of February 23, 1958, to perform the work and duties of Section Foreman on February 25, 26, and 28, 1958, and was not paid Section Foreman's rate of pay.

(2) Apprentice Foreman C. E. Wallace be paid Section Foreman's pay for February 25 through February 28, 1958, at the rate applicable to the position set forth in Bulletin No. 1224 establishing position of Section Foreman at Millen, Georgia.

EMPLOYES' STATEMENT OF FACTS: The claimant, who has established and holds seniority as an Apprentice Foreman, but who was working in another classification, was assigned to relieve the regularly assigned Apprentice Foreman on the Millen, Georgia, Section during the week of February 23, 1958.

During that week, the claimant was assigned to and performed duties attached to the position of Section Foreman on the aforementioned section, for which he was compensated at the Apprentice Foreman's rate of pay.

The dates and the section foreman's duties performed by the claimant are as follows:

On February 25, 1958, the claimant, accompanied by one section laborer, patrolled track (motored) from Millen to Dover, Georgia, and return, a total of forty-four miles, inspecting track, surfacing low joints in track and replacing missing track bolts.

On February 26, 1958, the claimant, accompanied by two section laborers, patrolled track (motored) from Millen, Georgia to Mile Post 94, Augusta District, and return, a total of thirty miles, jolting and surfacing track and replacing missing track bolts.

In Third Division Award No. 6828, Referee Messmore, it was held:

"The authority of this Division is limited to interpreting and applying the rules agreed upon by the parties. If inequities among employes arise by reason thereof, this Division is without authority to correct them as it has not been given equity powers. In other words, we cannot make a rule or modify existing rules to prevent inequities thus created. Renegotiation thereof is the manner provided by the Railway Labor Act, which is the proper source of authority for that purpose. See Award 5703. See, also, Awards 4439, 5864, 2491.

'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 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 barred under Article V of the November 5, 1954 Agreement;
- (2) The Carrier did **not** violate the effective Maintenance of Way Agreement during February, 1958, in having Apprentice Foreman Brinson and laborer(s) perform their customary work of inspecting and making minor repairs to track on their Section No. 2, on 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: What was said in Award No. 12417 also applies here.

This claim, therefore, will also be dismissed for failure to comply with the time limit requirements of the Agreement of November 5, 1954, specifically paragraph 1, (c) thereof.

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 claim is barred under the Agreement of November 5, 1954.

AWARD

Claim dismissed.

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.