

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John J. McGovern, 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 as a result of the abolishment of the last remaining Savannah Division Bridge and Building Gang No. 1, effective with the close of work Friday, October 31, 1959, when it assigned the work of this bridge and building gang to the forces consolidated into a gang as shown in the Statement of Facts and as a result thereof;

2. Division Carpenter I. M. Farrer, Upper Yard Carpenter Shop (Savannah) be paid the difference between Division Carpenter's rate and that of bridge and building foreman's rate, for all time, including overtime, made in performance of the work involved as shown in the Statement of Facts, beginning April 27, 1959, and to continue until this matter has been properly settled in accordance with the Agreement.

3. Bridge and Building Laborer H. L. Boulineau be paid the difference between the rate of pay he received as Bridge and Building laborer and that of first class carpenter, for all time, including overtime, made in performance of the work as shown in the Statement of Facts, beginning April 27, 1959, and to continue until this matter has been properly settled in accordance with the Agreement.

4. Furloughed First Class Carpenter J. Butler be paid at his rate of pay for all time, including overtime, rendered by Water Supply Foreman P. W. Youngblood, as shown in the Statement of Facts, beginning April 27, 1959, and to continue until this matter has been properly settled in accordance with the Agreement.

5. Furloughed Second Class Carpenter L. Jones be paid at his rate of pay for all time, including overtime, rendered by Tinner W. A. Holland, as shown in the Statement of Facts, beginning May 4, 1959, and to continue until this matter has been properly settled in accordance with the Agreement.

6. Furloughed laborer Z. Davis be paid at his rate of pay for all time, including overtime, rendered by Water Supply Helper L. Shivers, as shown in the Statement of Facts, beginning April 27, 1959, and to continue until this matter has been properly settled in accordance with the Agreement.

7. The violation referred to in Part 1 of the Statement of Claim, be discontinued and the Savannah Division Bridge and Building Gang be re-established in accordance with the Agreement.

EMPLOYEES' STATEMENT OF FACTS: The Claimants, as named in all parts of the Statement of Claim, each has established and holds seniority in his respective sub-department and is qualified to perform duties of his classification.

As a result of the abolishment of the last remaining Savannah Division Bridge and Building Gang No. 1, certain employees were consolidated into and performed work of a bridge and building gang. These employees, the dates and work they performed are listed below.

On April 27 and 28, 1959, Division Carpenter I. M. Farrer, Division Carpenter W. W. Jordan, B&B Laborer H. L. Boulineau, Water Supply Foreman P. W. Youngblood, Water Supply Helper L. Shivers and Second Class Carpenter A. Tompkins made repairs to trestle A187.2.

On April 29 and 30, 1959, Division Carpenter I. M. Farrer, Division Carpenter W. W. Jordan, B&B Laborer H. L. Boulineau, Water Supply Foreman P. W. Youngblood, and Second Class Carpenter A. Tompkins made repairs to trestle A187.2.

On May 1, 1959, Division Carpenter I. M. Farrer, Division Carpenter W. W. Jordan, B&B Laborer H. L. Boulineau and Second Class Carpenter A. Tompkins made repairs to trestle A187.2.

On May 4, 1959, Division Carpenter I. M. Farrer, Division Carpenter W. W. Jordan, B&B Laborer H. L. Boulineau, Second Class Carpenter A. Tompkins and Tinner W. A. Holland made repairs to trestle F6.4.

On May 5 and 6, 1959, Division Carpenter I. M. Farrer, Division Carpenter W. W. Jordan, B&B Laborer H. L. Boulineau, Water Supply Foreman P. W. Youngblood, Water Supply Helper L. Shivers, Second Class Carpenter A. Tompkins and Tinner W. A. Holland made repairs to trestle A187.2.

On May 7, 1959, Division Carpenter, I. M. Farrer, Division Carpenter W. W. Jordan, B&B Laborer H. L. Boulineau, Water Supply Foreman P. W. Youngblood, Water Supply Helper L. Shivers and Second Class Carpenter A. Tompkins made repairs to trestle A187.2.

On May 8, 1959, Division Carpenter, I. M. Farrer, Division Carpenter W. W. Jordan, B&B Laborer H. L. Boulineau, Second Class Carpenter A. Tompkins and Tinner W. A. Holland made repairs to trestle A187.2.

On May 11, 1959, Division Carpenter I. M. Farrer, Division Carpenter W. W. Jordan, B&B Laborer H. L. Boulineau, Water Supply Foreman P. W. Youngblood, Second Class Carpenter A. Tompkins and Tinner W. A. Holland made repairs to trestle A187.2.

- (4) The Board is without authority to grant the new rule here demanded, and has so recognized in prior awards,
 - (5) Claimants have no contractual right whatsoever to the demands, monetary or otherwise, made in Parts (2), (3), (4), (5), and (6) of the Employees' Statement of Claim,
 - (6) Part (7) of the Statement of Claim is an unlawful demand,
 - (7) Claim is clearly not supported by the contract in evidence, the Board cannot do other than make a denial award.
- (Exhibits not reproduced.)

OPINION OF BOARD: The Petitioner alleges that the Carrier violated the Agreement when it abolished Bridge and Building Gang number 1 on October 31, 1958, and assigned work normally performed by the gang to a group of employees supervised by a Division Carpenter. The other employees involved in this dispute are classified as a B&B laborer, a Tinner, a Water Supply Foreman, and his helper. It is to be noted that the Petitioner does not question the authority of the Carrier to abolish such a gang, and on this specific point has categorically stated that there was no violation of the agreement. However, the Petitioner does question the manner in which this work has been assigned to the aforementioned employees, contending that it is violative of Article 6, Paragraph 1 of the memorandum of Agreement of January 30, 1957, Rules 19, and 26 of the basic Agreement.

A review of the record reveals that the Petitioner in its original claim erroneously identified the effective date of the abolishment of the gang as October 31, 1959 rather than 1958, and mis-classified two of the employees. These were corrected by the organization and we make mention of them only in passing, since we do not consider them essential to the final determination of this case. Other issues have been raised by the contending parties, but we can see no useful purpose being served by discussing them in this Opinion.

We shall first direct our attention to Article 6, Paragraph 1 of the Memorandum of Agreement of January 30, 1957, upon which the Petitioner relies. It reads as follows:

"1. Work will be assigned to the proper classes of employees of their respective seniority sub-departments as provided for in Rules 1 and 2 and other rules relating thereto of agreement effective September 1, 1949, and except as provided in Paragraph 5 will be under the supervision of a foreman of their respective class who will also be required to keep the time of all employees under his supervision."

The Organization maintains that the subject employees in effect were consolidated into a B&B gang, and as such the Carrier was attempting to perpetrate a scheme to destroy the rule establishing seniority sub-departments together with the classification of a foreman as provided in the above article.

The exception mentioned in Article 6, Paragraph 1 of the Memorandum of Agreement, and contained in Paragraph 5 of the same Article, reads as follows:

"5. Nothing herein will prevent the application of Rules 26 and 32 of the current agreement or change the method of keeping time

or supervision of Machine Operators, Assistant Operators, Welders, Welder Helpers, Crossing Watchmen or other classes of employes whose time was carried other than by a foreman as of the effective date of this agreement."

The Carrier maintains that Division Carpenters, Division Tinnerns and Water Supply Foremen, come within the category of "other classes of employes" cited above, and have historically carried their own time as well as the time of any men assigned to work with them in their respective classifications. Likewise, they have historically supervised such men in their work.

The Carrier is essentially saying that these type employes have been working either individually or together over a span of several years without the benefit of a Foreman. Hence for all intents and purposes, it is involving prior practice as one of its principal defenses in this action. The Organization on the other hand, while admitting that such a practice did in fact exist, argues that such practice was rendered nugatory by the adoption of the January 30, 1957 Memorandum of Agreement. They further state that if such practice continued subsequent to the effective date of the above cited Agreement, it was unaware of it, and that at best, evidence of practice after such adoption, is only valid in the face of a vague and ambiguous rule. They contend that Paragraph 1 of Article 6 is clear and unambiguous.

We cannot agree with the contentions of the Organization that the subject employes should have been supervised by a Foreman under the circumstances of this case. The intent and meaning of Paragraph 1 of Article 6 is clear, especially so when read in conjunction with Paragraph 5. It simply means that work will be assigned to the proper classes of employes of their respective seniority sub-departments and except as provided in Paragraph 5, those employes will be under the supervision of a Foreman. The controlling words in Paragraph 5 are:

"Nothing herein will prevent . . . or change the method of keeping time or supervision of . . . other classes of employes whose time was carried other than by a Foreman as of the effective date of this agreement."

There is nothing contained in the basic contract or Memorandum of Agreement which specifically defines work to be granted exclusively to a B&B gang. The authority of the Carrier in accord with Rule 7 to abolish the gang was not questioned, and from the record it appears that such action was taken lawfully. The Carrier is under no obligation to establish a gang as such. Rule 26 is simply a yard-stick for guidance if and when the Carrier elects to establish such gangs. This comes within the purview of managerial prerogatives. It is a fundamental principle enunciated in many awards of this Board, that the Carrier, in abolishing positions no longer necessary for its operations, or in making other changes to improve the efficiency of its operations, retains all authority not proscribed by the agreement or by operation of law. This Board has held in a long line of decisions that it does not possess the authority to restore positions and must be guided accordingly in this case.

Although the dispute covered by this Docket MW-12552 is limited to claims arising in 1959 on Carrier's Savannah Division, recent Award 12820 involves an identical dispute between these same parties which arose in 1958 on another division and seniority district. In that award, the claims as presented by the Organization were denied, but the Board took cognizance

of Rule 26, which provides for a differential of four (4) cents per hour to lead or ranking carpenter, and held that on specified dates when the two division carpenters and their assistants worked together in a common task at the same location, one of the two (the ranking carpenter for whom the Foreman's rate was claimed) would be entitled to the four (4) cents per hour differential.

This Board has frequently held that, unless palpably wrong, it is never warranted in overruling a prior award between the same parties involving the same agreement rules and the identical issues. Awards 6833, 7968, 9954, 10050, 10288. We have carefully examined Award 12820. It is not palpably erroneous, and we adopt the decision as controlling precedent in this case. Accordingly, Claimant I. M. Farrer will be entitled to the differential of four (4) cents per hour for each specified claim date on which the two division carpenters and their assistants worked together in a common task at the same location, and in all other respects the claims are denied.

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 to the extent shown in Opinion.

AWARD

Claim sustained to extent shown in Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of September, 1964.