

Award No. 14020
Docket No. MW-12262

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William H. Coburn, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

ATLANTA JOINT TERMINALS

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

(1) The Carrier violated the effective Agreement when it called and used the Bridge & Building gang employed by and holding seniority on the Atlanta and West Point Railroad-The Western Railway of Alabama—instead of the Bridge & Building gang employed by and holding seniority on the Atlanta Joint Terminals to perform overtime work on the new bridge between Decatur and Hunter Streets on Saturday, July 18 and on Sunday, July 19, 1959.

(2) The Carrier further violated the effective Agreement when it failed and refused to allow, by default, the claim as presented to Chief Engineer Wilson by General Chairman Padgett in a letter dated September 4, 1959.

(3) Because of the violations referred to in Parts (1) and (2) of this Statement of Claim, the claim as presented by General Chairman Padgett in a letter dated September 4, 1959, file 62-29-20, be allowed.

EMPLOYEES' 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:

"September 4, 1959
File: 62-29-20

Mr. J. B. Wilson, Chief Engineer
Atlanta Joint Terminals
4 Hunter Street, S. E.
Atlanta 3, Georgia

Dear Sir:

The System Committee of the Brotherhood of Maintenance of Way Employees has been requested to file claim as follows:

Exhibit B are copies of affidavits from Chief Engineer Wilson, Chief Clerk to Chief Engineer Brooks, and Secretary to Chief Engineer, Mrs. Poole, which clearly show the letter was never received in the Chief Engineer's office. Certainly, if the letter had been written on September 4, 1959, as claimed by Petitioner, Petitioner's General Chairman would have told Carrier's Director of Personnel in the conference on September 9, 1959, that a claim had been progressed in the matter.

Carrier feels that this claim should be dismissed. But, if it is decided on its merits, then the agreement supports Carrier's position that what was done in this case was entirely proper. To support a claim of default, Petitioner must show more than he has shown in the instant case. There is no merit to the claim, and we respectfully request that it be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: In the handling of the dispute on the property and in the submissions to this Board, each party took the position that the claim had not been handled in accordance with the provisions of Rule 12 (Article V of the Agreement of August 21, 1954). That issue was referred to the National Disputes Committee established by Memorandum Agreement dated May 31, 1963, to decide disputes involving interpretation or application of certain stated provisions of specified National Nonoperating Employee Agreements. On March 17, 1965, that Committee rendered the following Findings and Decision (NDC Decision 12):

"FINDINGS: (ART. V) Paragraph 1(a) of Article V of the August 21, 1954 Agreement provides that—

'All claims or grievances must be presented in writing by or on behalf of the employee involved, to the officer of the Carrier authorized to receive same, within 60 days from the date of the occurrence on which the claim or grievance is based. 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 * * * in writing of the reasons for such disallowance. If not so notified, the claim or grievance shall be allowed as presented * * *'

The issue to be decided in this docket is whether the instant claim was timely filed.

The claim involved in this case was set forth in letter dated September 4, 1959 from the General Chairman of Maintenance of Way Employees to the Carrier's Chief Engineer. The General Chairman asserts that he placed the letter in the United States Mails on that date; the Carrier asserts that neither the Chief Engineer nor his staff has received it, and that the Carrier's first notice of the claim was receipt of letter of November 11, 1959, requesting that the claim be paid by reason of default under Article V.

The Carrier asserts that the usual procedure for presentation of claims is for the Local Chairman to file them with the Roadmaster. Employees assert that when the General Chairman, rather than the Local Chairman, presents claims he does so to the Chief Engineer. Both the carrier and the employees cite handling of earlier cases.

DECISION: Inasmuch as this case presents an issue of fact which cannot be resolved by the National Disputes Committee from the record before it, nor by the parties themselves, the docket is remanded to the Third Division, NRAB, for disposition on the merits.

This decision disposes of the issues under Article V of the August 21, 1954 Agreement. The docket is returned to the Third Division, NRAB, for disposition in accordance with paragraph 8 of the Memorandum Agreement of May 31, 1963."

The factual basis of the claim is set out in paragraph (1) of the Statement of Claim, and need not, therefore, be repeated here.

The Agreement in evidence covers Maintenance of Way employees working for the Atlanta and West Point Rail Road [sic] Company, the Western Railway of Alabama, the Georgia Railroad and the Atlanta Joint Terminals. Claimants were employees of the latter company.

Rule 3 (a) reads:

"(a) Seniority under this rule will be confined to the property upon which employed. There will be three Seniority Districts, as follows:

1. Atlanta and West Point Rail Road-The Western Railway of Alabama
2. Georgia Railroad (including Augusta & Summerville Railroad)
3. Atlanta Joint Terminals."

Rule 3 (g) reads:

"(g) The present practice of using extra gangs, bridge and building gangs, water service employees, welding gangs, and roadway machine operators of one railroad on the other is and shall be permitted, and the employees in such gangs will not establish any seniority under this agreement."

The basic contention of the Employees appears to be that the use of crews of the other railroads here parties to the Agreement in Atlanta Joint Terminals is permissible under Rule 3 (g) only at those times when Atlanta Joint Terminal crews are working but not when the latter crews are observing their rest days. Accordingly, the Employees assert, the rule was violated when on claim dates (rest days of claimant crew) an A&WP crew performed the work on the bridge.

The language of Rule 3 (g) clearly does not lend itself to the interpretation sought by the Employees. It contains no express restriction relating to work on rest days, and none can reasonably be implied. The principle that this Board may not properly add to, subtract from, or change the terms of an agreement is too well established to require citation of authority. To concur in what the Employees here seek would be to add to the contract something which is not there. This we may not do.

Accordingly, the claim will be 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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 17th day of December 1965.