

Award No. 14079
Docket No. MW-14033

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, 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 October 16 and 17, 1961, it instructed and permitted an employe other than a Track Foreman to direct the work of laborers in the Track Sub-department, and as a result thereof:

(2) Mr. C. Murphy be paid the difference between the rate of pay he received as Apprentice Foreman and that of First Class Yard Foreman account of the violation referred to in Part (1).

EMPLOYEES' STATEMENT OF FACTS: The Claimant, who at the time was holding the position of Apprentice Foreman at Savannah, Georgia, holds seniority as Section Foreman with seniority date of February 27, 1962 and is the senior Foreman unassigned as such.

On October 16 and 17, 1961, Track Supervisor J. A. Patton directed the work of Track Laborers R. Lattimore and W. F. Mullins in changing out rails between Mile Posts 140 and 142.

This claim was timely and properly presented and handled at all stages of appeal up to and including the Carrier's highest appellate officer.

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 reads:

"SCOPE

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

'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) Claimant was working elsewhere on October 16 and 17, 1961, and is not entitled to any difference in pay for those two days;

(2) The Carrier did not violate the effective Maintenance of Way Agreement on October 16 and 17, 1961, by Supervisor Patton carrying in a truck two laborers to perform their customary work 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: The alleged violation of the Agreement is predicated on an averment that: "The Carrier violated the effective agreement when . . . it instructed and permitted an employe other than a Track Foreman to direct the work of laborers in the Track Sub-department . . ." The burden of proving the averment, by evidence of probative value, is the Organization's. The record does not contain such evidence. In two previous cases involving the parties herein, we held such failure of proof to be fatal. Awards Nos. 12244 and 12415. In accord with the cited Awards, 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 12th day of January 1966.