

Award No. 14233
Docket No. MW-14354

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Herbert Schmertz, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
CENTRAL OF GEORGIA RAILWAY COMPANY**

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

(1) The Carrier violated the effective agreement when, on Wednesday and Thursday, December 6 and 7, 1961, it instructed and permitted Track Supervisor J. A. Patton to perform section foreman's work, as set out in the Statement of Facts, 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) of this claim.

EMPLOYES' 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, 1952 and is the senior Foreman unassigned as such.

On December 6, 1961, Supervisor J. A. Patton directed the work of Apprentice Foreman C. A. Adamson and Track Laborers R. Lattimore, C. J. Davis and W. Haynes in repairing road crossings at mile post D 99.6 and loading rail and unloading switch ties at Augusta Yard.

On December 7, 1961, Supervisor J. A. Patton directed the work of Apprentice Foreman C. A. Adamson and Track Laborers R. Lattimore and C. J. Davis in rerailling car off butting block elevator track, Waynesboro, Georgia and putting in 14 cross ties in elevator track at Waynesboro, Georgia.

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.

The Employes have failed in all handlings on the property to cite a rule, interpretation or practice that give them what they are here demanding. Not knowing of any rule, interpretation or practice that has been violated in any manner whatsoever, the Carrier has denied this baseless claim at each and every stage of handling on the property. The claim has no semblance of merit.

The rules and working conditions agreement between the parties is effective September 1, 1949, as amended. Copies are on file with the Board and the Agreement, as amended, is hereby made a part of this dispute as though reproduced herein word for word.

OPINION OF BOARD: The alleged violation of the Agreement is predicated on an averment that the Carrier violated the effective Agreement when, on Wednesday and Thursday, December 6 and 7, 1961, it instructed and permitted a Track Supervisor to perform section foreman's work. The burden of proving the averment, by evidence of probative value, is on the Organization. The record does not contain such evidence. In three previous cases involving the parties herein, we held such failure of proof to be fatal. Awards 14079, 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 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 11th day of March 1966.