



Award No. 14234

Docket No. MW-14355

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

(1) The Carrier violated the effective agreement when, on December 2, 3, 8, 10, 18, 23 and 25, 1961, it instructed and permitted employees other than Section Foremen to perform the work of a Traveling Section Foreman, as set out in the Statement of Facts, in directing the work of Section Laborer L. Fielding, who is assigned to the Traveling Section headquartered at Machen, Georgia, and as a result thereof:

(2) Mr. A. C. Crawford be paid 26 hours and 40 minutes at his time and one-half rate account of the violation referred to in Part (1) of this claim.

EMPLOYES STATEMENT OF FACTS: The Claimant, Mr. A. C. Crawford, holds seniority as Section Foreman with seniority date of January 9, 1946 and was assigned as Traveling Section Foreman headquartered at Machen, Georgia.

On December 2, 1961, Supervisor W. C. Resseau called Section Laborer L. Fielding at 9:20 A. M. and they worked until 12:00 noon repairing broken rail in Gordon Yard.

On Sunday, December 3, 1961, Supervisor W. C. Resseau called Section Laborer L. Fielding at 7:00 A. M. and they motored from Gordon, Georgia to Mile Post 71.5 Athens District, repairing broken angle bars and returned to Gordon, Georgia at 12:30 P. M.

On Friday, December 8, 1961, Supervisor W. C. Resseau called Section Laborer L. Fielding at 4:30 P. M. and they motored from Gordon, Georgia to Mile Post 186.5 Savannah District, to repair open joint and returned to Gordon, Georgia at 6:00 P. M.

On Sunday, December 10, 1961, Supervisor W. C. Resseau called Section Laborer L. Fielding at 6:00 A. M. and they motored from Gordon, Georgia to

The conference was confirmed by a "Memorandum of Conference" prepared by the Director of Personnel — four (4) copies of which were sent to General Chairman with a letter, dated October 5, 1962. By letter, dated October 12, 1962, General Chairman Padgett acknowledged receipt.

The Director of Personnel's decision as shown in the "Memorandum of Conference" is reproduced below:

"Decision. Exception is taken to the above claim due to the following fatal errors in the claim: First, time is claimed for A. C. Crawford when as a matter of fact Laborer L. Fielding did not perform any work for the railroad. Secondly, Foreman A. C. Crawford is the foreman of a section with headquarters at Machen, Georgia, and his territory does not extend between Gordon and Tennille, Georgia. By no stretch of the imagination can Mr. Crawford claim work off of his assigned territory.

Without prejudice to the foregoing positive position of the Carrier, we shall turn to and discuss the demerits of the claim:

The track work that was actually performed was performed by Track Laborer L. Fielding, seniority date of May 16, 1937. The track work performed by Fielding on certain dates was the same kind of work he has performed week in and week out, month in and month out, year in and year out, for over 25 years. Needless to say, Fielding is a qualified trackman. He knew **how** to do the work — all he needed was to be told to do the work. There was no need for a Foreman to stand over him just to watch Track Laborer Fielding work. This is but another of the dozens and dozens of claims filed by General Chairman Padgett in an effort to have a Foreman stand over or within a few feet of each and every laborer — regardless of whether any supervision is needed or required. There is no rule, interpretation or practice requiring a Foreman to stand over each man at all times. Just the opposite is true on this property, as proven by numerous affidavits in possession of the Carrier, and discussed in our conference. Since neither the effective rules agreement, interpretations or practice substantiates this baseless claim, it is denied in its entirety."

The Employees 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 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 certain dates in December, 1961, it instructed and permitted employes other than Section Foremen to perform the work of a Traveling Section Foreman. 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.