

Award No. 14235
Docket No. MW-14399

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 Saturday, March 31, 1962, Division Engineer J. G. Watwood, Supervisor J. A. Patton and Apprentice Supervisor J. W. Lee directed the work of D. Grant, R. Lattimore, C. Moore, C. J. Davis and W. Haynes as set out in the Statement of Facts, and as a result thereof:

(2) Mr. E. S. Youmans be paid 12 hours at his time and one-half rate account of the violation referred to in Part 1.
[Carrier's Docket No. MW-9387.]

EMPLOYEES' STATEMENT OF FACTS: The Claimant, Mr. E. S. Youmans, holds seniority as Track Foreman with seniority date of February 24, 1919 and was assigned to the position of Traveling Section Foreman headquartered at Millen, Georgia.

On Saturday, March 31, 1962, Division Engineer J. G. Watwood, Supervisor J. A. Patton and Apprentice Supervisor J. W. Lee called Track Laborers D. Grant, R. Lattimore, C. Moore, C. J. Davis and W. Haynes at 8:00 A. M. and worked them until 8:00 P. M. between Millen, Georgia and Augusta, Georgia, cleaning ditches, jolting track and changing angle bars.

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.

CARRIER'S STATEMENT OF FACTS: The claim presented in letter dated April 10, 1962, alleges a violation of the effective Agreement between the Central

This erroneous claim is somewhat similar to other claims handled in conference on June 5, 1961, and Carrier denied each and every one of the claims listed as follows:

Docket MW 8236, my file MW 3062
Docket MW 8238, my file MW 3064
Docket MW 8239, my file MW 3065
Docket MW 8240, my file MW 3066
Docket MW 8241, my file MW 3067
Docket MW 8242, my file MW 3068
Docket MW 8243, my file MW 3069

The General Chairman did not appeal the denial decisions of the Carrier on any of those claims, as well as some others in the past as the records will show; therefore, it is clear that the decision of Carrier is the correct interpretation of the Agreement. Surely those claims which are identical, and are above listed, and others, would have been appealed by the General Chairman to the National Railroad Adjustment Board for adjudication had not Carrier's decision been absolutely correct.

The claim remains denied in its entirety as per letter dated December 7, 1962, from the Director of Personnel to General Chairman G. A. Padgett."

As stated, General Chairman Padgett acknowledged receipt of the "Memorandum of Conference" by letter dated January 23, 1963.

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 Saturday, March 31, 1962, a Supervisor and an Apprentice Supervisor directed the work of track laborers. 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 thereof, 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.