

Award No. 14247
Docket No. MW-13422

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

ATLANTA AND WEST POINT RAILROAD

THE WESTERN RAILWAY OF ALABAMA

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

(1) The Carrier violated the Agreement beginning on April 28, 1961, when it refused to permit Track Laborers Dan Burton and Pete Butler the right to continue employment in the Mechanized Tie Gang.

(2) The Carrier now compensate Track Laborers Dan Burton and Pete Butler for all wage loss retroactive sixty (60) days from July 7, 1961 until the violation is discontinued and corrected.

EMPLOYEES' STATEMENT OF FACTS: On April 26, 1961, Claimants Dan Burton and Pete Butler were performing their regular duties as Track Laborers within the Carrier's Mechanized Tie Gang. Each had established and held seniority rights as Track Laborers in the Track Sub-Department.

As the undersigned General Chairman advised the Director of Personnel within a letter dated July 26, 1961,

"While attending a joint meeting in Atlanta I discussed this case with the affected employes as well as other members of their gang who advised of the circumstances involved. They state that it was raining on April 27 and the entire gang had quit work and sought shelter along with Chief Engineer J. B. Wilson who was on location. Foreman Wilson advised Track Laborers Burton and Butler to return to their regular duties of knocking off rail anchors and pulling spikes, in the rain and before the rest of the gang returned to work, or they would be considered out of service. Foreman Wilson's actions constituted unjust treatment and entitled these men to a hearing in accordance with the agreement, thus the reason for the claim being filed."

As a result of their unwarranted dismissal, Local Chairman Morris formally requested a hearing to determine the facts of the case. The Carrier

These men voluntarily resigned from the service and, having done so, are not entitled to an investigation and we have no intention of having an investigation of this matter. Somebody deliberately mis-stated the facts to you.

Your claim was declined on July 20 and if you have any idea of progressing the matter, the time limit will run from that date."

It will be noted that the only thing correct in Mr. Padgett's letter of July 26 was the fact that it was raining on the day in question.

On August 31, 1961, General Chairman Padgett wrote Carrier's director of personnel, requesting another conference to further discuss this matter, that discussion being held on November 3, 1961, at which time Mr. Padgett requested that Carrier consider this matter on a leniency basis and permit Burton and Butler to go back to work with seniority and vacation rights unimpaired. Mr. Padgett was advised that Carrier could not treat this matter on a leniency basis, that this was not a discipline case, that no charges had been filed by Carrier against these men, that they had left the service of their own accord, but that, however, the men had a perfect right to apply for re-employment and, if granted, they would be in the category of new employees. Following this last conference the matter lay dormant until April 19, 1962, one day before the time limit expired, when the organization progressed same to this Division.

(Exhibits not reproduced.)

OPINION OF BOARD: At the threshold we are faced with the contention of the Carrier in its submission that the Time Limit on Claims rule was not complied with by the Petitioner in that claim for pay for time lost by the Claimants was not presented within sixty days of the date of the occurrence giving rise to the claim.

A review of the record shows that the time limit issue was not raised by the Carrier in the handling of the dispute on the property. It is, therefore, precluded from raising the issue for the first time before the Board.

As to the merits of the dispute, the record is in conflict as to whether the Claimants quit of their own volition or were dismissed by the foreman.

Based on the entire record, the Board is of the opinion that a proper solution of the entire controversy is that the Claimants be restored to the service, with seniority and vacation rights unimpaired, but without any compensation for time lost while out of service.

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 Claimants be restored to service with seniority and vacation rights unimpaired, but without any compensation for time lost.

AWARD

Claim disposed of in accordance with the above Opinion and Findings.

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

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 18th day of March 1966.