



Award No. 15788

Docket No. MW-13676

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John J. McGovern, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

THE ATLANTIC AND DANVILLE RAILWAY COMPANY

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

(1) The Carrier violated the Agreement when it failed and refused to assign and award the position of Section Foreman on Section AD 105 (advertised in Bulletin No. 12, dated 5-29-61) to Mr. D. M. Poythress but hired a new employee to fill said position.

(2) The Carrier also violated the provisions of Section 1(a) of Article V of the August 21, 1954 Agreement when

(a) Roadmaster Duncan failed to disallow (and to give written reasons for disallowance) within sixty (60) days of July 27, 1961, the claim presented to him in favor of Claimant Poythress under date of July 27, 1961.

(b) The Carrier failed and refused to allow the claim as presented in the aforesaid letter to July 27, 1961 as it is obligated and was requested to do under the defaulting provisions of Section 1(a) of Article V of the August 21, 1954 Agreement.

EMPLOYEES' STATEMENT OF FACTS: Claim was initially filed in a letter reading:

"July 27, 1961

Mr. Fred Duncan
Roadmaster
Atlantic & Danville Railway Company
Lawrenceville, Virginia

Dear Sir:

On June 1, 1961, an employee who held no seniority with the Atlantic and Danville Railway Company was placed on a foreman's position. Mr. D. M. Poythress holds seniority as foreman on the

ment until such time as we can negotiate a separate agreement between the maintenance of way employes and the Atlantic and Danville Railway Company.

Yours very truly,

/s/ E. L. Kiester
E. L. Kiester
President
The Atlantic and
Danville Rwy. Co."

Inasmuch as the parties have not, as yet, negotiated a separate agreement, the maintenance of way and structures department employes on The Atlantic and Danville Railway property are covered by the Agreements between this Brotherhood and the Southern Railway Company.

CARRIER'S STATEMENT OF FACTS: It is the position of this carrier that there is no merit to the claim at this time, because Mr. Poythress has no standing as a track foreman since he was disqualified by both the Southern Railway and this company on February 14, 1958.

The question of Mr. Poythress' status as a Track Foreman was submitted as an Ex Parte Submission on May 24, 1960, and was assigned Docket MW-11882 and as no decision has been rendered in the case, the subsequent claim is without merit.

We respectfully request that this claim be denied, as the decision in Docket MW-11882 will affirm or deny Mr. Poythress' rights as a Track Foreman.

OPINION OF BOARD: On July 27, 1961, the General Chairman filed a claim as set forth in Part (1) of the Statement of Claim with the Roadmaster. No reply was received, nor does the Carrier deny it failed to disallow the claim presented within the 60 day time limitation provided for in Article V, Section 1(a), of the 1954 Agreement.

The Organization urges that the claim be allowed as presented for the reason that the Roadmaster failed to disallow the claim in writing within the prescribed time limits.

Carrier's defense is that there is no merit to this claim, because Claimant had no standing as a track foreman since he had previously been disqualified. Claimant's prior disqualification was subject to review by this Board in Docket MW-11882, Award 13275. The Board sustained Claimant's rights to a track foreman position.

The Board here finds that a violation of Article V, Section 1(a), of the 1954 Agreement has been established, and, therefore, this claim "shall be allowed as presented." See NDC Decision No. 16.

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 Carrier failed to comply with Article V of the August 21, 1954 Agreement.

AWARD

Claim sustained as presented.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of July 1967.