

**Award No. 16113**  
**Docket No. MW-16715**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**John J. McGovern, 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, effective October 1, 1964, it reduced the rate of pay of the foreman on Savannah Division Extra Gang MS-2 from an extra gang foreman's rate of pay to a section foreman's rate of pay and as a result thereof:

(2) Mr. R. B. Collins now be paid the difference between the section foreman's rate of pay he received and that of extra gang foreman beginning October 1, 1964 and to continue until settlement is made in accordance with the agreement. (Carrier's file MW-3154.)

(3) The Carrier violated the effective agreement when, beginning October 1, 1964, it increased the forces assigned to Savannah Division Extra Gang MS-2 to foreman and six laborers without assigning a cook and as a result thereof:

(4) Cook J. Davis be paid for eight hours per day for each work day beginning October 1, 1964 and to continue until settlement is made and in addition:

(5) Foreman R. B. Collins and Track Laborers C. Lott, R. Plair, J. Laster, J. Natson, S. Byrd and E. L. Sphinx each be paid his actual meal expenses for each work day beginning October 1, 1964 and to continue until settlement is made account of the violation referred to in Part 3. (Carrier's file MW-3153.)"

**EMPLOYES' STATEMENT OF FACTS:** Each of the claimants had established and held seniority in his respective rank and sub-department within the Maintenance of Way and Structures Department.

Some time prior to October 1, 1964, the Carrier established an extra gang, identified as MS-2 on its Savannah Division which was headquartered in camp trailers (furnished by the Carrier) containing accommodations for sleeping and for preparing meals. The gang consisted of Foreman R. B. Collins and Track Laborers C. Lott, R. Plair, J. Laster and E. L. Sphinx.

Division Engineer Goodman investigated the matter, and wrote General Chairman on January 22, 1965, declining the claim. See Carrier's Exhibit 2-B.

The next letter was one from the General Chairman to first appeals officer, Chief Engineer J. A. Rust of Carrier. That letter was dated March 19, 1965, and photo is attached hereto marked Carrier's Exhibit 2-C.

Chief Engineer Rust investigated the matter, and replied to General Chairman by letter dated May 14, 1965, photo copy of which is attached hereto marked Carrier's Exhibit 2-D.

On June 25, 1965, General Chairman appealed next to Mr. H. W. Waters, Vice President-Operations. Photo of that letter is hereto attached marked Carrier's Exhibit 2-E.

Vice President Waters looked into the dispute, and then wrote General Chairman Padgett on August 17, 1965, as per Carrier's Exhibit 2-F.

General Chairman next wrote Mr. L. G. Tolleson, Director of Personnel, under date of October 13, 1965 — photo copy of which is attached hereto marked Carrier's Exhibit 2-G. Mr. Tolleson is the highest officer of Carrier designated to handle claims such as this on appeal.

After checking into the matter, Director of Personnel Tolleson wrote the General Chairman on December 2, 1965, photo copy of which is hereto attached marked Carrier's Exhibit 2-H. This letter confirmed the conference held on November 26, 1965.

Exception is taken to the Brotherhood combining two separate and individual claims into one on appeal to your Board. We submit that there has been a violation of the rules agreement and the Railway Labor Act, as amended, and particularly Section 3(i). We therefore submit that the Board should forthwith dismiss these fatally defective claims.

Without prejudice to the foregoing exception and positive position of Carrier that these combined claims should be dismissed, we shall continue:

The Brotherhood has failed in all handlings of these two separate claims on the property, to cite a rule, interpretation or practice which gives them what they demanded in the claims handled on the property. As a matter of fact, there is nothing whatever in the agreement to support the conglomerated claims appealed to your Board for adjudication. The claims have no semblance of merit. There has been no violation whatsoever.

The rules and working conditions agreement between the Carrier and its employees represented by the Brotherhood of Maintenance of Way Employees is effective September 1, 1949, as amended. Copies are on file with your Board, and the agreement, as amended, is hereby made a part of this dispute as though reproduced herein word for word.

(Exhibits not reproduced.)

**OPINION OF BOARD:** This case is divided into three separate claims, the first one of which alleges that Carrier reduced the rate of pay of the Foreman on Extra Gang MS-2 from an Extra Gang Foreman's rate of pay to

a Section Foreman's rate of pay. This became effective October 1, 1964, and the Organization maintains that since it is in violation of the Agreement, Claimant Collins should be paid the difference between the section Foreman's rate of pay he did receive, and that of the extra gang foreman's rate which he is requesting.

The Organization, in behalf of Claimant contends that although a reduction in force notice was issued on September 24, 1964, abolishing the positions of Extra Gang MS-2 effective September 30, 1964, the gang itself was not abolished and continued work until October 6, 1964. At this time, the gang was moved to Milledgeville, Georgia, where they continued to work until October 27, 1964. They then moved to Wriley, Georgia and were working at that location until November 7, 1964, the date upon which Claimant notified the Organization to file the claim.

The Carrier arguendo states categorically that the Extra Gang MS-2 was abolished effective September 30, 1964 in accordance with the aforementioned reduction in force notice, that a "section gang" was temporarily established at Milledgeville, Georgia, that it was anticipated to be of less than 30 days duration, that consonant with Rule 5, no bulletin was issued. Carrier also states that this gang was eliminated within 30 days and thereupon ceased to exist.

The Organization makes a point that the Claimant and his men comprising the gang, all during the disputed time, were housed in Camp Cars, which were the same Camp Cars they had used as headquarters prior to September 30, 1964. They also aver that section gangs on this railroad have never headquartered in Camp Cars since rule 20 provides that section foremen will be furnished with houses or be paid \$15.00 per month compensation in lieu thereof. They conclude that since the gang was headquartered in Camp Cars, it must be considered an extra gang, hence the claim should be sustained.

Carrier counters by stating that the Camp Cars were permitted to be used by Claimant and his men only as a convenience. Further Claimant was paid \$15.00 house compensation to avoid a possible controversy.

The evidence before us indicates that the difference in pay, including the \$15.00 house compensation, between what claimant earned and what he is requesting is less than \$1.00. There is no evidence before us which would nullify the September 24, 1964 reduction in force notice. We agree with Carrier that the Extra Gang was abolished pursuant to this notice effective September 30th. The entire argument on behalf of Claimant appears to be based on the fact that Camp Cars were used by his men subsequent to September 30, and that since section gangs have never headquartered in Camp Cars, we therefore must conclude that these men must have comprised an extra gang. We cannot agree with this reasoning, since the evidence indicates otherwise. The fact that the reduction in force notice was never rescinded, and that no bulletin was issued in accordance with Rule 5, convinces us that Carrier is correct in its presentation to this Board. Further, it appears to us that the Claimant by accepting the \$15.00 compensation in lieu of a house, is effectively estopped in his claim. He is thereby indirectly admitting that he was a section gang Foreman rather than Extra Gang Foreman. In the General Chairman's letter of October 13, 1965 to Carrier's Director of Personnel, he states: "It is a fact that section gangs on the Central of Georgia have never headquartered in

Camp Cars as Rule 20 provides that section foremen will be furnished with houses or compensated in lieu thereof. (Emphasis ours.) We therefore conclude that this was a temporary section gang and not an Extra Gang. We will deny this portion of the Claim.

Insofar as that portion of the claim contained in subparagraphs 3 is concerned, wherein the Organization claims a violation of paragraph 21(b) by Carrier having failed to assign a Cook to the section gang under previous discussion, we will deny it since we have already ruled that the gang in question was a section gang and not an Extra Gang. Rule 21 is therefore inapplicable. It applies only to Extra and B and B Gangs. It does not apply to section gangs. This portion of the Claim is not supported by the Agreement; nor has there been any evidence of practice presented which would enable us to make a sustaining award. We will deny the Claim.

Part 5 of the claim requests that we approve meal expenses for Foreman Collins and six track laborers for each work day beginning with October 1, 1964 and continuing until a cook is assigned. The Organization has neither cited a rule of the Agreement upon which they base this claim, nor have they presented us with sufficient substantive evidence of practice to enable us to agree with their theory of this portion of their case. We will deny this portion of 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 Employee 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 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 1st day of March 1968.