

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23377  
Docket Number MS-23404

John B. LaRocco, Referee

PARTIES TO DISPUTE: (Georgia Northern Railway Company  
(  
(United Transportation Union

STATEMENT OF CLAIM: "That the 'Claim for lost pay of all MoFW Employees on the Georgia Northern Railroad beginning April 1, 1979 until proper payment was allowed (about June 27, 1979)' was not properly presented and handled claim by the United Transportation Union in accordance with the Railway Labor Act as amended and the collective bargaining agreements between the parties, and that even if it were held to be properly presented and handled, said claim is not payable under the applicable agreement. "

OPINION OF BOARD: The Carrier petitioned this Board to review a dispute regarding time claims purportedly brought on the property by the Organization. The basic facts are undisputed. Between April 1, 1979 and August 27, 1979, twelve track employee were underpaid twenty five cents per hour. According to the applicable collective bargaining agreement, the twelve employees were to be paid 8 twenty five cents per hour cost of living adjustment commencing on April 1, 1979. Between February 16, 1979 and March 31, 1979, five bridge and building employees were over compensated thirty six cents per hour and between April 1, 1979 and August 27, 1979, these same employees were paid eleven cents more per hour than they were entitled to receive under the applicable agreement. On August 27, 1979, the Organization's General Chairman called 8 Carrier labor relations official and informed him of the above described shortages and overpayments. The carrier insists that the telephone call on August 27, 1979 was the first time it learned of the improper payroll payments. After attempts by the parties to achieve a mutually satisfactory resolution of the problem proved fruitless, the Carrier (with notice to the Organization) unilaterally made payroll adjustments to compensate each of the twelve track employees' twenty five cents per hour during the sixty days prior to August 27, 1979 and to -up eleven cents per hour for the same sixty day period from the five bridge and building employees. The Carrier is now urging us to affirm its solution to the wage mispayment problem. The Organization has contested the Carrier's action.

The Carrier argues that the Organization did not institute 8 valid time claim until August 27, 1979 and, therefore, the employees can only claim retroactive pay for the sixty days preceding August 27, 1979 in accord with Article 10 of the applicable agreement. The Carrier further asserts that

it handled the problem in an equitable fashion by limiting its recovery of overpayments to the same Sixty day period though the five bridge and building employees had been overpaid since February 16, 1979. The Organization contends that each employee who was shorted filed 8 valid claim by informing the Carrier of the number of hours the employee worked. The number of hours worked was recorded for payroll purposes. Since time roll sheets were filed beginning on April 1, 1979, the Organization contends the Carrier must allow all retroactive back pay because it failed to respond to those alleged time roll claims within sixty days as required by Article 10(a). As to the bridge and building employees, the Organization states that the overpayments are unrelated to the shortages so the former cannot be handled as part of a single solution.

After carefully reviewing the record, we do not find any evidence that the employees filed the alleged time roll claims beginning on April 1, 1979. There are simply no documents or other probative evidence, beyond the Organization's bare assertions, to demonstrate the claims were filed. Thus, we need not consider whether or not 8 time roll constitutes 8 valid claim within the meaning of Article 10. On the basis of this record, the Organization first initiated a valid claim on August 27, 1979. Because the time bar in Article 10 prevents the employees from recovering back pay except for the sixty days immediately preceding the filing of their claims, the Carrier acted reasonably in paying the twelve track employees twenty five cents per hour for the sixty day period prior to August 27, 1979. Similarly, the bridge and building employees have received more compensation than they were entitled to for the period from February 16, 1979 to August 27, 1979 even after considering the Carrier's deductions for the last sixty days of that period. Contrary to the Organization's arguments, the overpayment to the five bridge and building employees was related to the shortages since the improper wage payments arose from the misapplication of the same cost of living adjustment. The Carrier, thus, acted reasonably when it limited its adjustments for the overpayments to the sixty days prior to August 27, 1979. Accordingly, we deny the Organization's claim for more retroactive back wages for the track employees as well as its claim to recover back the overpayments the Carrier has recouped from the five bridge and building employees for the sixty day period before August 27, 1979.

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, 8s 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.

A W A R D

The Carrier's petition is sustained to the extent consistent with our Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:



Executive Secretary

Dated at Chicago, Illinois, this 15th day of September 1981.