

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

H. Nathan Swaim, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
GEORGIA RAILROAD**

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

(1) That Carrier violated the provisions of the current agreement when it laid off its Maintenance of Way forces on May 25, 1946, on account of a strike by other classes of employees;

(2) That all Employees affected be reimbursed eight (8) hours pay at their regular rates of pay because of this violation of the agreement.

EMPLOYES' STATEMENT OF FACTS: Effective Saturday, May 25th, 1946, the Carrier temporarily laid off many of its Maintenance of Way Employees on account of a strike on this date by other classes of railroad employees.

The Employees involved were not paid for the time lost.

Effective Monday, May 27, 1946, these same employees were returned to their work on their regular positions.

The Agreement, effective December 16, 1944, between the parties to the dispute is by reference made a part of the Statement of Facts.

POSITION OF EMPLOYES: Rule 13(b) of the current agreement states as follows:

"(b) Regularly established daily working hours will not be reduced below eight (8) hours per day, six (6) days per week, except that this number of days may be reduced in a week in which holidays occur by the number of such holidays. This Article may be modified at any time by agreement between the Management and representative of the employees, and does not apply to employees assigned, by agreement, to a less number of hours or days. Should Federal or State Laws establish less than forty-eight (48) hours at pro rata rate as a maximum work week, nothing in this Article shall prohibit the Railroad from reducing the established hours per week as outlined above to comply with such laws in order to avoid payment of penalty overtime.

When due to inclement weather, interruptions occur to regularly established work periods preventing eight (8) hours work, only the hours between the beginning and release from duty, exclusive of the meal period, shall be paid for. This does not apply to monthly rated employees."

Carrier's action in this case cannot be considered as precipitate. We had no knowledge of how long the strike would last. We made no advance preparations for layoffs, and as above stated, made no reductions until May 25th, and then only in line with existing agreements.

This claim is without merit and we respectfully request that it be declined.

(Exhibits not reproduced.)

OPINION OF BOARD: The questions presented here are the same as in Docket MW-4129 on which we have this day rendered an award.

For the reasons assigned in Award No. 4170, we hold that the Carrier violated the Agreement as alleged in this 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 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 violated the Agreement as alleged.

AWARD

The claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 22nd day of November, 1948.