Award No. 12785
Docket No. MW-12185

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, 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 effective Agreement when, on November 10, 11, 12, 13 and December 3, 1959, it permitted employes of the Atlanta Joint Terminals to perform work of section forces on the territory assigned to Section No. 1, commonly called the Belt Line of the Atlanta and West Point Rail Road Company – The Western Railway of Alabama.

(2) Section Foreman R. L. Coleman and the two laborers assigned under his jurisdiction be paid at their respective rates of pay for an equal proportionate share of the total man-hours consumed by the Atlanta Joint Terminals employes in performing the work referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: The Claimant Section Foreman and the Claimant Section Laborers were regularly assigned to their respective positions on Section No. 1, commonly called the Belt Line, of the Atlanta and West Point Rail Road Company – The Western Railway of Alabama.

On November 10, 11, 12 and 13, 1959 and on December 3, 1959, the Carrier assigned and used employes of the Atlanta Joint Terminals to perform work in connection with the relaying of a switch and surfacing track on the territory comprehended in Section No. 1 on the Atlanta and West Point Rail Road Company – The Western Railway of Alabama. Two hundred eighty (280) man-hours were consumed by the Atlanta Joint Terminals employes in the performance of this work.

The Agreement violation was protested and claim as set forth herein was presented and progressed in the usual and customary manner on the property. Even though the Agreement violation was admitted, the Carrier's highest appellate officer declined the claim, contending that since the claimant employes were fully employed, the claim was improperly filed.

Claimants were employes of Atlanta and West Point Railroad – The Western Railway of Alabama and their seniority was confined to that line under Paragraph (f) of Rule 3, which reads:

"(f) The seniority district of all employes in all sub-departments will be considered the railroad by which employed."

On the dates of the claim, claimants were assigned to so-called "Belt Line" of Atlanta and West Point Railroad, which extends from a connection with tracks of Atlanta Joint Terminals at Atlanta, to Oakland City, a distance of approximately five miles. The so-called "Belt" is the freight main line of Atlanta and West Point Railroad entering Atlanta. On the dates named section forces of Atlanta Joint Terminals, seniority district 3, assisted claimants in relaying of a switch and surfacing of track.

Claim was progressed in usual channels for Foreman Coleman and his two laborers. Carrier admitted it was wrong to use these men on another seniority district, but took the position that claimants were deprived of no work and were not proper claimants under the agreement.

POSITION OF CARRIER: It is readily admitted by Carrier that section forces of Atlanta Joint Terminals had no right to work on Atlanta and West Point Railroad. However, their use deprived claimants of no work. They lost absolutely nothing by the transaction. As Carrier's director of personnel pointed out in letter to Petitioner's general chairman on January 28, 1960, if there be a claim, then it should have been filed in behalf of furloughed laborers who would have augmented Foreman Coleman's gang to do the work. There is no rule in the agreement calling for payment to claimants and no basis whatever for any payment to them.

The claim as filed is without merit and Carrier respectfully requests that it be denied.

OPINION OF BOARD: The essential facts in this dispute are not in issue and Carrier admitted on the property that the controlling Agreement between the parties was violated as set forth in part (1) of the instant claim.

The sole issue to be determined is whether or not the Claimants should be compensated at their respective rates of pay for an equal proportionate share of the total man-hours consumed by the Atlanta Joint Terminals employes in performing the work in question. Carrier contends that such payments are not warranted even though the Scope Rule of the Agreement was violated because Claimants were fully employed on the specific dates involved in the dispute. Carrier asserts that the Agreement contains no provisions for penalties arising out of contractual violations.

Petitioner contends that as the Scope Rule was violated by the Carrier a prima facie case for damages as claimed has been presented to the Board and that the Carrier has offered no evidence to support its assertion that Petitioner seeks only punitive damages.

We find our recent Award 12671 to be controlling in this case. Therefore, we will sustain the claim in its entirety.

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 Employes involved in this dispute are respectively Carrier and Employes 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.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of July 1964.