

Award No. 13206

Docket No. SG-13134

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(Supplemental)**

Arnold Zack, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

CENTRAL OF GEORGIA RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Central of Georgia Railway Company:

(a) That the Carrier violated and continues to violate the Agreement of July 1, 1950, when on December 19, 1960, Mr. F. A. Downs was directed to move to Columbus, Ga. to finish the work on installation of crossing signals on the Americus District and later sent to the Augusta District and other points to install crossing signals while being paid as Leading Signalman instead of as Signal Foreman.

(b) That Mr. F. A. Downs be paid the difference in the rate as Leading Signalman and the rate as Signal Foreman beginning Dec. 19, 1960 and to continue until such time as the violation is corrected.

(c) That Mr. J. E. Stewart, C.T.C. Signal Maintainer at Barnesville, Ga. be paid the difference in what he is paid as Signal Maintainer at Barnesville, Ga. and what he would have earned as Signal Foreman, beginning Dec. 19, 1960 and to continue until such time as the violation is corrected. [Carrier's File: SIG 463: Cy SIG-D.F.]

EMPLOYEES' STATEMENT OF FACTS: The Carrier had a Signal Gang headquartered at Childersburg, Alabama performing work in connection with a CTC project between Sterretts and Trammells, Alabama. A Signal Foreman was in charge of this gang, which was housed in company-owned sleeping cars. The gang was also furnished a meal car and cook in accordance with the Signalmen's Agreement.

On December 19, 1960, the Carrier sent one Leading Signalman and four Assistant Signalmen to Columbus, Georgia to install crossing signals within the confines of nearby Fort Benning. Upon completion of this project, Mr. Downs and four Assistant Signalmen were sent to Augusta, Georgia to finish a project and when this was completed they were sent to Watkinsville, Georgia. Fort Benning is approximately 100 miles from Childersburg, the point where the Foreman and signal gang (crew) were working; Augusta is about 366

AWARD

Claim denied."

Third Division Award 6379 (Kelliher)

"The Petitioner has failed to sustain its burden of proof to show a contract violation.

AWARD

Claim denied."

Third Division Award 6378 (Kelliher)

"Based upon an analysis of all the evidence, it must be found that the petitioners have failed to sustain the burden of proof and, therefore, claim is accordingly denied.

AWARD

Claim denied."

Third Division Award 5418 (Parker)

"* * * Under our decisions (see e.g., Award No. 4011) the burden of establishing facts sufficient to require or permit the allowance of a claim is upon him who seeks its allowance and, where that burden is not met, a denial Award is required for failure of proof.

AWARD

Claim denied."

And there are many other Awards of the Board on this point, too numerous to mention.

It is well settled that the freedom of action of a Carrier is restricted only by statutory enactment or by the terms of an effective agreement. The latter does not prohibit the act which is the subject of this claim nor does it require payment of the penalty demanded. The instant claim is without any semblance of merit, and it should be denied in its entirety.

In view of all the facts and circumstances shown by the Carrier in this Ex Parte Submission, Carrier respectfully requests the Board to deny this baseless claim in its entirety.

OPINION OF BOARD: Despite variations in dates, locations, and names, the facts, contentions of parties and reasoning of the Board in this case are so similar to those dealt with in Award 13204 as to preclude a repetitive discussion. Reference to the earlier case suffices.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 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 13th day of January 1965.

Dissent to Award No. 13260, Docket SG-13134

For the reasons set out in our Dissent to Award No. 13204, we dissent.

/s/ **W. W. Altus**
W. W. Altus
For Labor Members