

Award No. 13798

Docket No. MW-13597

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

P. M. Williams, 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 it assigned by bulletin the position of Junior Apprentice Foreman at Gordon, Georgia to Mr. R. L. Smallwood and as a result thereof:

(2) Mr. R. L. Smallwood be paid the difference between the rate of pay he received as Junior Apprentice Foreman and that of First Class Yard Foreman, beginning December 6, 1960, and to continue until he is properly assigned in accordance with the Agreement.

EMPLOYEES' STATEMENT OF FACTS: The Claimant, Mr. R. L. Smallwood, holds Junior Apprentice Foreman's seniority as of July 16, 1949 and Foreman's seniority as of April 9, 1956.

By letter of December 16, 1960, File 28, Mr. R. L. Smallwood was advised that:

"You are successful applicant for job of Junior Apprentice Foreman at Gordon, Georgia, as advertised in my bulletin No. 1398 dated December 5, 1960.

As you are now working this job, you will continue to do so."

Mr. Smallwood's time is kept by the Traveling Section Foreman headquartered at Machen, Georgia.

The agreement in effect between the two parties to this dispute dated September 1, 1949, together with supplements, amendments and interpretations thereto are by reference made a part of this Statement of Facts.

POSITION OF EMPLOYEES: Sub-section (c) of Section 4 of the Agreement signed at Savannah, Georgia, on January 30, 1957, amending Rule 27 (c) of the Agreement of September 1, 1949, reads:

AWARD

Claim denied."

Also see other awards, including Third Division Awards Nos. 8172, 7964, 7908, 7861, 7584, 7226, 7200, 7199, 6964, 6885, 6884, 6824, 6748, 6225, 5941, 2676, and others. Also see Second Division Awards Nos. 2938, 2580, 2569, 2545, 2544, 2042, 1996, and others — all of which clearly state that the burden is on the claimant party to prove an alleged violation of the agreement. To date, the Employees have produced no evidence of any violation.

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

OPINION OF BOARD: No controversy exists over the following facts in this dispute:

- (1) The Claimant held seniority as a track laborer, as a Junior Apprentice Foreman, as an Apprentice Foreman and as a Foreman. On December 6, 1960, after a bulletin, he was assigned to an outlying point, located at Gordon, Georgia, as a Junior Apprentice Foreman.
- (2) The section foreman supervising Gordon was headquartered at Machen, Georgia.

Petitioner asserts that Claimant's assignment was in violation of the Agreement in effect at that time; it charges that the Carrier is receiving the benefit of an experienced foreman in the position and, therefore, it should be required to compensate Claimant at the foreman rate. No evidence is submitted to us which would tend to support a finding that Claimant was doing any work other than that of a Junior Apprentice Foreman.

The Petitioner cites the following provision of the Amendment to the Agreement, under date of January 30, 1957, to support its assertion of a violation.

SECTION 6 (2).

"... In addition to the laborers assigned to the section foremen at their headquarters there may be additional laborers assigned to outlying points not to exceed two (2) at any one location and not to exceed six (6) on the Savannah Division. . . . The laborers assigned to outlying points will be a part of some designated section gang."

In its argument to us Petitioner urges that we recognize and give effect to the generally accepted rule of construction which provides that when an exception is spelled out, no further exceptions should be implied, since the parties to the agreement have presumably and deliberately, excluded them. Applying the exclusivity rule referred to, we are asked to specifically find that only laborers may be assigned to outlying points, such as the one where Claimant is now working. (Emphasis ours.)

Were it not for another provision in the January 30, 1957, Amendment to the Agreement we would be inclined to base our finding on the rationale suggested by the Petitioner; however, to make such a finding it would be

necessary that we also find that when the Carrier assigned the Junior Apprentice Foreman Claimant to the outlying point of Gordon, Georgia, the number of laborers in the Machen section gang, to which gang the laborers at Gordon were assigned, was affected. (Emphasis ours.) The clear language of Section 4 (c) of the mentioned Amendment will not permit such finding, for therein it is stated, "that when a Junior Apprentice (Foreman) is assigned to a section gang, it will not affect the number of laborers allowed that particular gang."

Our findings must be that the facts presented herein, when viewed in the light of the language of this Agreement, do not convince us that there has been a violation of that Agreement. We will deny 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 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 did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of July 1965.