

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Don Hamilton, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
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, on Saturday and Sunday, May 27 and 28, 1961, it instructed and permitted Track Laborer L. Fields, Jr. to perform the duties of Assistant Rail Welder in assisting Rail Welder J. W. Isabell in the performance of his duties, and as a result thereof;

(2) Track Laborer L. Fields, Jr. be paid the difference between what he received at Track Laborer's time and one half rate and the time and one half rate of the position he worked as Assistant Rail Welder for a period of twenty-four (24) hours and in addition;

(3) Assistant Rail Welder C. E. Wolf be paid for twenty-four (24) hours at his respective time and one half rate account of the violation referred to in Part 1.

EMPLOYEES' STATEMENT OF FACTS: Claimant L. Fields, Jr. holds seniority as Track Laborer with seniority date of March 11, 1937.

Claimant C. E. Wolf holds seniority as Assistant Rail Welder with seniority date of February 26, 1951 and was assigned as such to assist Rail Welder J. W. Isabell at the time the work in question was performed.

On Saturday and Sunday, May 27 and 28, 1961, Rail Welder J. W. Isabell was assigned to perform rail welder's duties, consuming twelve hours on each of these dates, and he was instructed and permitted to use Track Laborer L. Fields, Jr. in lieu of his regular assistant, C. E. Wolf.

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

THIRD DIVISION AWARD 6378**(Referee Kelliher)**

"Based upon an analysis of all of 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**(Referee 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."

Also see other awards, including **Third Division Awards** Nos. 8172, 7964, 7908, 7861, 7584, 7226, 7200, 7199, 6964, 6885, 6844, 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.

(Exhibits not reproduced.)

OPINION OF BOARD: In this case Rail Welder Isabell was assigned to perform certain work on his rest days, Saturday and Sunday, May 27 and 28, 1961. He required assistance in order to fulfill his assignment. The Carrier assigned a track laborer to provide the needed assistance. The Organization argues that the regular Assistant Rail Welder, C. E. Wolf, should have been called to perform the work. Since it is an admitted fact, that the Rail Welder was called to work, and that he needed assistance, we hold that the Carrier should have called the Assistant Rail Welder to supply such assistance. Therefore, we sustain claim number three.

The basis of this claim is a question of fact. The question concerns which employe should have been called. The question of the nature of the work performed is not an issue in this case. Therefore, we find no support for claim number two, and the same is hereby denied.

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 Agreement was violated.

AWARD

Claim 2 - Denied.

Claims 1 and 3 - Sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 17th day of December 1965.