

Award No. 14104
Docket No. MW-15002

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Daniel House, 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 Agreement when it assigned Apprentice Foreman W. H. Blackburn, instead of Section Foreman R. S. Collins to perform Section Foreman's work and duties during overtime hours on November 21, 22, 25 and 28, 1962, and failed to compensate him therefor at Section Foreman's rate of pay. (System Case 15-31-115. Docket MW-9978 - File MW 3104.)

(2) Mr. W. H. Blackburn be allowed the difference between what he should have been paid at the Savannah Yard Section Foreman's time and one-half rate and what he was paid at the apprentice foreman's time and one-half rate for the services referred to in Part (1) of this claim.

(3) Savannah Yard Section Foreman R. S. Collins be allowed pay at his time and one-half rate for fifteen (15) hours and ten (10) minutes because he was improperly deprived of performing the overtime service referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: Mr. W. H. Blackburn was assigned as Apprentice Foreman Savannah Yard when he was instructed and permitted by Supervisor M. C. Chitty to perform the work of a section foreman in directing the work of the section laborers assigned to the gang.

Mr. R. S. Collins was assigned as Section Foreman Savannah Yard at the time of the agreement violation.

On Wednesday, November 21, 1962, Apprentice Foreman Blackburn and Track Laborers A. Butler, W. Washington and A. Wilson worked from 4:30 P.M. to 5:30 P.M., replacing broken rail at A. C. C. Co.

On Thursday, November 22, 1962 (Thanksgiving Day), Apprentice Foreman W. H. Blackburn and Track Laborers A. Butler, W. Myers, Jr. and

sand, and proceed to the hump to scatter sand around the automatic oiler, also the foreman instructed him to pick up certain material for use at yard office. The materials were placed on the motor car by the Storekeeper. Material carrier Darrock accompanied Mr. Garee. About one hour and a half was consumed by Garee in the performance of the above tasks. Claims by both employes were submitted, requesting 4 hours' pay for scattering sand, and also four hours' pay for handling the Storehouse Materials. These claims were denied, and the claims for Mr. Garee were progressed.

The carrier raises several reasons why the claims should be denied. We will discuss only one of them, to wit, the claims for penalty pay are without agreement support.

The claimant was fully paid for the work he performed; he lost nothing. The employes have not cited any rule of the Agreement to support the claims for penalty pay; in fact, we think they have conceded same in their submission; we quote from Employes' Submission:

"The organization also takes the position that the Second Division, National Railroad Adjustment Board has sustained the position of other organizations when employes of other crafts performed work that did not belong to them that employes that the work belonged to should be paid and now the organization feels that the same should be done in reverse in this case and the employes that were required to perform work that did not belong to him be compensated as asked for in his original case. To sustain this position the organization would like to have the Board refer to the following decisions: Docket No. 309-Award 304; Docket No. 339-Award No. 358; Docket No. 426-Award No. 408; Docket No. 699-Award No. 693; Docket No. 1201-Award 1269; Docket No. 1274-Award No. 1365; and Docket No. 2474-Award No. 2784."

In the absence of a rule in the agreement which would support the penalty claims, they will have to be denied." (Emphasis ours.) And there are numerous awards on this established principle.

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 claim in its entirety.

(Exhibits not reproduced.)

OPINION OF BOARD: The claim is based on the charge that Carrier assigned an Apprentice Foreman to perform the work and duties of a Section Foreman. The only information supplied by Employes as to the nature of the involved work is a recital in Employes' Statement of Facts in their Ex Parte Submission that the Apprentice Foreman, together with certain Track Laborers, replaced a broken rail, rerailed engine and gauging track, and repaired tracks, together with Employes' assertion, denied by Carrier and supported by no evidence, that the Apprentice Foreman was instructed to direct the work of the section laborers. There is no evidence in this record to prove that the involved work was work belonging exclusively to the position of the Section Foreman, or that the Section Foreman was the

“regular employe” entitled to the work under Rule 16(f) of the Agreement, or even that the involved work was foreman’s work. We will, therefore, deny the claim.

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 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 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 24th day of January 1966.