

NATIONAL RAILROAD ADJUSTMENT BOARD**THIRD DIVISION****(Supplemental)**

Herbert Schmertz, 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, on Saturday and Sunday, January 13 and 14, 1962, it instructed and permitted employes other than track foremen to direct the work of laborers in the Track Sub-department in making repairs as set out in the Statement of Facts for a total of 13 hours and 10 minutes, and as a result thereof:

(2) Mr. W. H. Blackburn, Track Foreman, Savannah Yard, be paid 13 hours and 10 minutes at his time and one-half rate account of the violation referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: The Claimant, who at the time was holding the position of Track Foreman, Savannah Yard, holds seniority as Track Foreman with seniority date of December 28, 1925 and is fully qualified to perform the duties of this position.

On Saturday, January 13, 1962, between the hours of 3:00 A.M. and 9:00 A.M., Track Supervisor M. C. Chitty directed the work of Track Laborers A. Butler, W. Myers, Jr. and C. B. Walker at derailment of cars in Bay Street Yard, Savannah, Georgia.

On Saturday, January 13, 1962, between the hours of 11:30 A.M. and 4:00 P.M., Rail Welder W. L. Poythress, Jr. directed the work of Track Laborer W. Myers, Jr. in replacing broken rails at West Yard, Savannah, Georgia, and American Agricultural Chemical Company.

On Sunday, January 14, 1962, between the hours of 8:00 P.M. and 10:40 P.M., Rail Welder W. L. Poythress, Jr. directed Track Laborer W. Myers, Jr. in making repairs to switch run through by engine of Train No. 29 at Savannah shop yard bridge.

normal and customary duties of welding and heating. He did not perform any duties belonging exclusively to a foreman.

Since neither the effective rules agreement, interpretations nor practice substantiates this baseless claim, it is denied in its entirety.

* * * * *

(And other docket claims were handled.)

**CENTRAL OF GEORGIA
RAILWAY COMPANY**

/s/ J. L. Ferrell
Assistant Director of
Personnel

APPROVED:

/s/ G. N. Certain
Director of Personnel"

Four (4) copies of the Memo of Conference were sent to General Chairman Padgett with a letter of transmittal from Mr. Certain dated October 5, 1962.

General Chairman Padgett acknowledged receipt of same per his letter to Mr. Certain dated October 12, 1962.

The Employees have failed in all handlings on the property to cite a rule, interpretation or practice that gives them what they are here demanding. Not knowing of any rule, interpretation or practice that has been violated in any manner whatsoever, the Carrier has denied this baseless claim at each and every stage of handling on the property. The claim has no semblance of merit.

The rules and working conditions agreement between the parties is effective September 1, 1949, as amended. Copies are on file with the Board and the agreement, as amended, is hereby made a part of this dispute as though reproduced herein word for word.

OPINION OF BOARD: The alleged violation of the Agreement is predicated on an averment that the Carrier violated the effective Agreement when, "on Saturday and Sunday, January 13 and 14, it instructed and permitted employees other than track foremen to direct the work of laborers in the Track Sub-department. . . ." The burden of proving the averment, by evidence of probative value, is on the Organization. The record does not contain such evidence. In three previous cases involving the parties herein, we held such failure of proof to be fatal. Awards 14079, 12244 and 12415. In accord with the cited Awards, 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 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 11th day of March 1966.