

NATIONAL RAILROAD ADJUSTMENT BOARD**THIRD DIVISION****(Supplemental)****Nicholas H. Zumas, 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 Thursday, January 4, 1962, it instructed and permitted Rail Welder W. L. Poythress, Jr., to make repairs as set out in the Statement of Facts which allowed him to make 5 hours and 55 minutes at his time and one-half rate, and as a result thereof:

(2) Apprentice Foreman C. Murphy be paid for 5 hours and 55 minutes at his time and one-half rate account of the violation referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: The Claimant at the time was holding the position of Apprentice Foreman at Savannah, Georgia and is responsible for making repairs within the Savannah Yard confines when the foreman of this gang is performing his patrol duties.

On Thursday, January 4, 1962, at 5:30 P. M. Rail Welder W. L. Poythress, Jr. was instructed and permitted to replace broken rails at the oil mill and Virginia-Carolina Chemical Corporation for which he received credit for a call, amounting to 2 hours and 40 minutes at his time and one-half rate.

Again on January 4, 1962, at 9:00 P. M. Rail Welder W. L. Poythress, Jr. was instructed and permitted to make repairs to switch at the Virginia-Carolina Chemical Corporation for which he received credit for 3 hours and 15 minutes at his time and one-half rate.

Claim was timely and properly presented and handled at all stages of appeal up to and including the Carrier's highest appellate officer.

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

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 January 4, 1962, "it instructed and permitted employes other than 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 previous cases involving the parties herein, we held such failure of proof to be fatal. Awards 14079, 12244, 12415, and 14232. 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 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 31st day of March 1966.