



Award Number 17499

Docket Number MW-16592

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, 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 Monday, October 19, 1964, it failed and refused to permit Columbus Division Track Laborer Colbert Smith to exercise his seniority over a junior employee, and as a result thereof:
- (2) Track Laborer Colbert Smith be paid at his straight time rate of pay for each work day, including holidays, beginning Monday, October 19, 1964, and to continue until settlement is made. (Carrier's file MW-3133)

EMPLOYEES' STATEMENT OF FACTS: Claimant Colbert Smith has established a seniority date of September 1, 1943, as a track laborer on the Columbus Division.

Prior to October 19, 1964, the claimant was laid off on account of force reduction. Subsequent thereto he reported to the section headquarters at Carrollton, Georgia, at 8:00 A.M. October 19, 1964, for the purpose of exercising his seniority over junior Track Laborer Davenport who holds a seniority date in that class of September 20, 1945.

Despite the claimant's superior seniority as a laborer, the Carrier did not permit him to exercise his seniority over the junior laborer.

Claim was timely and properly presented and handled by the Employees 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.

CARRIER'S STATEMENT OF FACTS: The claimant track laborer is employed on Carrier's Columbus Division. He has a seniority date of September 1, 1943 as a track laborer on the Columbus Division seniority district. The Columbus Division seniority district is composed of 715 miles of railroad in Western Georgia and in the State of Alabama. On the July 1, 1964 seniority roster, the name of Colbert Smith is No. 50 on a roster of 185 men.

jecting the baseless assertions, contentions and conclusions of the Brotherhood, and upholding the prior decisions of carrier representatives. The claim is without any semblance of merit.

Following further exchanges, a conference date was mutually agreed upon by the parties, and same was held on November 26, 1965, in the offices of Southern Railway Company in Atlanta, Georgia. General Chairman G. A. Padgett represented the Brotherhood and Mr. J. L. Ferreel represented Director of Personnel L. G. Tolleson. Inasmuch as the General Chairman failed to produce any reasonable evidence whatsoever in the conference, in an attempt to establish his claim or prove it, the claim remained declined in its entirety, as per Mr. Tolleson's letter hereto attached marked Carrier's Exhibit #10.

The claim was declined at each and every stage of handling on the property, as is shown by the principal correspondence. The claim is without any semblance of merit.

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

(Exhibits not reproduced)

OPINION OF BOARD: The claim herein alleges that the Carrier refused to permit the Claimant track laborer to exercise displacement rights over a junior track laborer on October 19, 1964, following abolishment of his job in a force reduction.

The record is clear that the Claimant went to the Track Supervisor's office at Carrollton, Ga., on October 19, 1964, and indicated to the supervisor that he wanted to exercise displacement rights over a junior laborer who was working in the section gang with headquarters at Carrollton. At the time Claimant lived at Buchanan, Ga., some nineteen miles from Carrollton.

What was actually said by the Supervisor and the Claimant in their meeting on October 19, 1964, is far from clear. In the handling on the property the Carrier stated:

"* * * Supervisor James told Colbert Smith that he had the right to exercise his seniority and displace Davenport with headquarters at Carrollton, Georgia, but he would be expected to protect the job, and for him to do that, it would be best that he reside at Carrollton. Smith advised Supervisor James he would talk with his wife before he made any move. Smith did not report back to Supervisor James, and Mr. James did not have any contact with Smith until he was placed on checkroll October 23, 1964."

The Claimant contended that the Supervisor refused to permit him to displace the junior laborer at Carrollton unless he moved to Carrollton. The Carrier has denied that the Supervisor stated or inferred that Claimant could not displace the junior laborer until the Claimant moved to Carrollton.

The record shows that Claimant was called for work on October 23, 1964, as a member of Gang No. 5 with headquarters at Carrollton, Ga. The

Carrier states that he has continued working in that gang and has continued to live at Buchanan.

The time actually lost by the Claimant amounted to four days, October 19 to 22, inclusive. In our opinion the record warrants sustaining the claim for those four days, especially in view of the fact that from October 23, 1964, the Claimant has worked as a member of the gang with headquarters at Carrollton and continued to live at Buchanan. When Claimant reported to the Supervisor's office on October 19, 1963, in connection with displacing a junior laborer he was entitled to a definite answer.

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.

A W A R D

Claim sustained to the extent indicated in Opinion.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

**ATTEST: S. H. Schulty
Executive Secretary**

Dated at Chicago, Illinois, this 30th day of September 1969.