



Award Number 17500

Docket Number MW-16593

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, 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 Monday, September 21, 1964, it failed and refused to permit Macon Division Track Laborer Willie Starling to exercise his seniority over a junior employee, and as a result thereof:
- (2) Track Laborer Willie Starling be paid at his straight time rate of pay for each work day, including holidays, beginning Monday, September 21, 1964, and to continue until settlement is made. (Carrier's file MW-3134)

EMPLOYEES' STATEMENT OF FACTS: The claimant was employed as a regularly assigned track laborer in T&S Gang No. 2, Macon Division. He has established and holds seniority rights in that class as of December 16, 1929. On Friday, August 14, 1964, the claimant was furloughed (cut off) because of a reduction in force. He repeatedly attempted to obtain permission from Supervisor H. J. Lester to displace Track Laborer Sport Harris, who was assigned to District Section No. 3, Fort Valley, Georgia. Track Laborer Harris has established seniority in that class as of January 13, 1946. The claimant was denied the right to displace, but was directed to work in a material gang. When the material gang was abolished on August 31, 1964, the claimant again requested permission to displace Track Laborer Harris and he was again denied the right to do so.

The claimant resides at Fort Valley, Georgia. Although he had been affected by a reduction of force on two other occasions, he had repeatedly been denied the right to displace a track laborer with seventeen (17) years less seniority. Consequently, the claimant sought the assistance of the undersigned General Chairman, who instructed him to report to the foreman at Fort Valley and again request that he be allowed the right to displace the junior track laborer on District Section No. 3. The claimant did so on Friday, September 18, 1964, and he was again denied the right to displace. The claimant remained out of service until October 7, 1964.

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.

Vice President Waters checked into the claim, and finding the Chief Engineer's facts and declination of the claim to be correct, wrote General Chairman accordingly in letter dated June 25, 1965, photo copy being attached hereto as Carrier's Exhibit #7.

General Chairman Padgett next wrote Mr. L. G. Tolleson, Director of Personnel, on August 23, 1965, appealing the claim. Mr. Tolleson is the highest designated officer of carrier to whom claims such as this may be appealed. Photo copy of Mr. Padgett's letter is hereto attached marked Carrier's Exhibit #8.

Following investigation, Director of Personnel wrote General Chairman on October 12, 1965, declining this meritless claim in its entirety. Photo copy of that letter is hereto attached marked Carrier's Exhibit #9.

A conference was mutually agreed upon by the parties, and same was held in the offices of the Southern Railway in Atlanta, Georgia, on November 26, 1965. Present for the Brotherhood was General Chairman G. A. Padgett, and representing Mr. L. G. Tolleson was Mr. J. L. Ferrell, Assistant Director of Labor Relations, of Washington, D. C. The conference was confirmed and declination of this meritless claim reaffirmed by letter of December 2, 1965, from Director of Personnel to the General Chairman—photo copy hereto attached as Carrier's Exhibit #10.

The claim was declined at each and every stage of handling on the property, as is shown by the aforementioned correspondence. The claim is obviously 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 Petitioner contends that Claimant was entitled to exercise his seniority over a junior employe on Section Gang No. 3 at Fort Valley, Ga., on September 21, 1964.

The Carrier contends that Claimant was not affected by any reduction in force as contemplated by Rule 7(a) of the Agreement; that he voluntarily absented himself from the position he held on Section Gang No. 24, and that he was not entitled to exercise displacement rights.

The record in the case consists primarily of assertions by one party and denials by the other. This Board has no way of resolving conflicting evidence or settling questions of disputed facts. Based on the record in this case, the Board has no alternative but to dismiss 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 claim will be dismissed.

A W A R D

Claim dismissed.

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.