Award No. 674
Docket No. MW-712

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

William H. Spencer, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

THE NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY

STATEMENT OF CLAIM: "Are the following section laborers, viz: W. A. Merritt, Jim Jolly, Jas. Samples and J. A. Colvin, employed as such by the Nashville, Chattanooga & St. Louis Railway, entitled, under the provisions of Maintenance of Way Rule 46, to the difference between section labors' rate of pay and signalman helper's rate of pay, for the time consumed—sixteen (16) hours,—i. e., eight (8) hours each on November 12th and November 15th, 1937, respectively, doing work as indicated in the Joint Statement of Facts?"

JOINT STATEMENT OF FACTS: "These men were directed by their section foreman to comply with instructions of the signalmen in helping to do the following work:

"Excavating for concrete foundations and ditches for cables, refilling ditches for cables and around concrete foundations, trucking and handling materials, mixing and placing of concrete, jacking pipe under street, and placing signal cases and poles.

"Rule 46 reads:

'COMPOSITE SERVICE.

'(a) Except as provided in Paragraph (c) of this rule, an employe performing work in a higher classification for four hours or more on any day shall be allowed the higher rate of pay for the entire day. An employe contending for a higher rate of pay under this rule shall notify his immediate superior at the close of the day, in writing, stating his reasons for claiming the higher rate. If the claim is declined, he may handle in accordance with Rule 3.

'(b) When an employe is temporarily assigned by proper authority to a lower rated position, his rate of pay will not be reduced.

'(c) An employe left in charge of a gang for one or more full days in the Foreman's absence when the Foreman is receiving pay, shall be paid the Assistant Foreman's rate of pay for each full day he is in charge of the gang.

'(d) B & B Sub-Department employes will have no claim for the higher rates when they are not filling the place of a higher rated employe who is off duty; except that an employe sent out on line

which is filed herewith as Carrier's Exhibit 'B'. It will be noted from this exhibit that section laborers are not charged with the responsibility of whether or not proper proportions of sand, cement and stone are used in mixing concrete, but such responsibility rests with signalmen in charge.

"As evidence that the claimants involved herein were not competent to perform any work other than common labor, copy of statement of Section Foreman W. H. Towns, from whose gang these men were drawn, is filed herewith as Carrier's Exhibit 'C'."

OPINION OF BOARD: The ultimate facts on which this dispute must be decided are not in dispute. It is admitted of record that the carrier assigned the claimants, who are included under the agreement between the carrier and the Brotherhood of Maintenance of Way Employes, to perform certain work of common labor required by a signal crew in the installation of grade crossing flasher-light signals. The dispute accordingly presents two main issues: (1) whether the carrier under the rules of the agreement between the parties was entitled to assign maintenance of way employes to assist a signal crew, and to pay them at their scheduled rates as maintenance of way men; (2) whether the claimants, assuming that their claim is otherwise well-founded, sufficiently followed the procedures established by the rules of the agreement to perfect their claims.

The reasoning upon which the petitioner bases its claim may be summarized briefly. Rule 46 (a) of the Maintenance of Way agreement provides, among other things, that "an employe performing work in a higher classification for four hours or more on any day shall be allowed the higher rate of pay for the entire day." Under the assignment that the carrier made the claimants became "signal helpers" within the meaning of Section 5, Article 1, of the agreement between the carrier and the Brotherhood of Railway Signalmen. This states that "a man assigned to assist other employes specified herein shall be classified as a signal helper." The petitioner concludes that since the rate of a signal helper is higher than that of a section laborer, the claimants are entitled to the difference between these two rates of pay for the days involved in this controversy.

The carrier insists that an award based on this claim will give the claimants the benefit of an agreement—the agreement between the Brotherhood of Railroad Signalmen and the carrier—to which neither the petitioner nor the claimants are parties. This argument however, misses the point of the petitioner's claim. It does not ask for the benefit of an agreement to which it is not a party; it merely asks that if employes whom it represents are required to do work falling under another agreement, the employes under their own agreement and for its protection shall be compensated for the work at the scheduled rates for such work.

The carrier insists, however, that maintenance of way employes, when required to do work falling under another agreement, do not become "signal helpers" within the meaning of the Signalmen's agreement. It cannot be denied that descriptively, workers who are assisting signal workers, whatever may be the class of work that they are performing at a given moment, are signal helpers in the absence of a showing that they are otherwise designated or described. Moreover these workers, when assigned as they were here, literally meet the description of a signal helper found in Section 5, Article 1, of the Signalmen's agreement. This provides, as previously pointed out, that "a man assigned to assist other employes specified herein shall be classified as a signal helper." This provision does not require that a signal helper shall possess skill, nor does it expressly or by implication negative the implication that a signal helper may be required to perform work of common labor incident to the more

specialized work of signal service. It seems clear, therefore, both from the point of view of ordinary logic and from the point of view of the rules of the agreement that the claimants in this dispute were during the periods involved acting in the capacity of signal helpers.

The carrier also argued that the claim is not well-founded because it is based on an unpermitted interpretation of that portion of Rule 46 of the Maintenance of Way Agreement, which provides among other things, that "an employe performing work in a higher classification for four hours or more on any day shall be allowed the higher rate of pay for the entire day;" that this applies merely to classifications of positions within the Maintenance of Way Agreement and not to positions outside that agreement; and that, in any event, the work in question was not of a "higher classification" but precisely the same kind of work which the claimants were accustomed to perform daily.

The purpose of this rule and of similar rules found in collective agreements is to protect such agreements and employes by restraining the carrier from moving employes from one type of work to another in an arbitrary manner. If the rule should be applied, as conceded by the carrier in the present dispute, to protect the employe against being moved from one type of work to another under the same agreement, a fortiori it should be applied to protect him against being moved from work under one agreement to work under another.

The positions to which the claimants were moved, in the opinion of the Division, are of a "higher classification" if for no other reason than that they carry higher rates of pay than the positions of section laborers. But quite aside from the matter of compensation and accepting the fact that the employes in the new assignment were performing the same kind of work they would have been performing under their normal assignments, the employes may have found the work with a signal crew more congenial and occupationally more promising than the work with a section crew. It cannot be said, therefore, that serving as a signal helper, even though involving common labor, is not of a higher classification than that of a section laborer.

The principle of departmentation of workers by crafts or classes and within classes and crafts has been severely criticized by many students of industrial relations. They charge that the strict observance of this principle unduly hampers management and seriously interferes with business efficiency. There is, of course, some justification for these charges. On the otherhand, recognition of this principle is essential to the preservation of orderly collective bargaining. To permit an employer arbitrarily to move employes from the scope of one agreement to the scope of another agreement would place all collective agreements at the mercy of the employer. If too great rigidity in the classification of employes comes about, the remedy under the Railway Labor Act is by negotiation and agreement.

The carrier also urged that even though the claimants were prima facie entitled to the higher rate of pay as claimed, they did not follow the procedure set forth in Rule 46 (a) to perfect their claims. This rule provides in part that "an employe contending for a higher rate of pay under this rule shall notify his immediate superior at the close of the day, in writing, stating his reasons for claiming the higher rate."

When the carrier initiated the project involved in this dispute, it called four furloughed section men to assist the signal crew. The present claimants, being senior to the four men originally called, notified the carrier by letter that they claimed the work in question and requested that they be given the rate of pay of a signal helper. The carrier, while recognizing the right of the claimants to the work, notified them through appropriate channels that they would be expected to work at the rate of a section

laborer. The claimants gave the carrier no further notice in writing with respect to the appropriate rate of pay. It is on these facts that the carrier bases its contention that the claimants did not follow the prescribed procedure to perfect their claims.

The provision in question apparently is not common in railway collective agreements. The record in this dispute throws no light on its purpose. Even though skepticism as to the utility of the provision may be entertained, the Division cannot lightly ignore a provision so clearly expressed as this. It is, of course, arguable that since the carrier had notice of the request of the claimants before they began work, it was entitled to no other notice. The Division, however, takes the view that the unqualified refusal of the carrier to approve the request for the higher rate of pay was a waiver of the condition in Rule 46 (a), and relieved the claimant of any further obligation with respect to notice.

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 claimants under the rules of the agreement between the parties were entitled to the rate of pay of a signal helper on the days they were required by the carrier to assist the signal crew in its work.

AWARD

The claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division.

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 7th day of July, 1938.

DISSENT ON AWARD 674, DOCKET MW-712

The scant respect this award pays the terms of the agreement under which the claim is made, alone, would impel my dissent; but the philosophic basis for rejecting the rules of the agreement, here unfortunately introduced, imposes a duty to challenge such a dangerous departure from the proper functions of this Board.

Proceeding in the first instance from the correct premise that the work upon which the claimants were engaged was "work of common labor," the majority proceeds erroneously to pose the main issue upon which the dispute turns and finally resolves the question not in the light of the rules but in the light of the referee's philosophy. After summarizing the contentions, the majority recite, in paragraph six of the Opinion, that the purpose of this rule (46 (a)) and of similar rules in other contracts is to "protect such agreements and employes by restraining the carrier from moving employes from one type of work to another in an arbitrary man-

ner." Where is found this "purpose"? Not in the record; and certainly it is not apparent in the contract. It is only an assumption which is used to destroy the contract it purports to shield, and protect from imaginary danger employes in no wise menaced. On this assumption the referee builds an **a fortiori,** viz: "It (the rule) should be applied to protect him against being moved from work under one agreement to work under another." The majority then move to apply this principle.

Work of this character under the Maintenance of Way contract is common labor; the work performed was common labor. So much is admitted; yet, to achieve, under Rule 46 (a), the result sought, the work must be classified as "higher." It is "higher," the Opinion recites, because higher paid—the very point in ultimate issue to be decided! Sorely needed strength is added to this violent assumption of everything at issue by a bit of speculation: The section crew **may** have enjoyed the company of the signalmen more than they enjoyed their customary companionship, or **may** have regarded the work as occupationally more promising. Perhaps, we counter, they liked old associates best; and while the section men may regard different stretches of ground with varying degrees of delight and hope, there is no escaping that digging dirt is digging dirt, one shovelful promising intrinsically no greater future than another.

The "higher" nature of the work being thus established, a principle is announced, a principle not found in law or the contract, the principle of "departmentation." "If too great a rigidity*** comes about, the remedy under the Railway Labor Act is by negotiation and agreement." But, assuming changes in agreements possible, why should they be made if, as in the majority opinion, they will be treated in the fires of philosophy until they yield results fantastic to the intellect, shocking to the conscience, and never contemplated by the parties.

There is and can be no such departmentation of the work as the referee's Opinion requires. Clerks and Telegraphers do much work in common. Award 615. Employes of many classes use common types of tools and do work in part similar, in part dissimilar. The section foreman and superintendent both make records; but neither is a clerk. Signal helpers and tracklayers do common labor; but all are not signal helpers. The signal helpers do more than common labor. It is this other work that makes them signal helpers, and not the common labor that they do. This ability to require roughtly classified crafts to do work common in part to all is an essential to practical and successful operation. The preservation of this ability is a principle required in the public interest. It has already been so violently disregarded, in many fields, as in this case, as to threaten the very existence of a hard-pressed competitive industry and the well-being of those who are the immediate beneficiaries of a short-sighted "philosophy."

The practice generally followed by the division in its awards of quoting directly from the original submissions of the parties often does not reveal all of the essential facts; exhibits are not reproduced and evidence and circumstances revealed by subsequent rebuttals and rejoinders, essential to a complete understanding of the case, are thereby many times omitted. Such is the situation in the instant case.

Pertinent facts omitted are that Section Foreman W. M. Towns received instructions from his supervisor to have his section gang available Monday morning, November 8, with four additional men for the purpose of furnishing labor incident to the installation of flasher light signals. Towns states that on November 8 five men of his gang worked 8 hours on this project and six men, including the claimants, worked 3 hours each (The record does not reveal that the four men added to the gang for this work were furloughed Maintenance of Way employes—the inference is to the contrary, but it is not material). On the morning of November 9,

Foreman Towns received written notice from claimants Merritt, Jolly, Colvin, and Samples that, being the senior men in the gang, they claimed the work with the signalmen and the lowest rate of pay in the signal department. This notice was mailed by Foremen Towns to Supervisor Nevils, who in turn referred it to the Division Engineer. On November 11, Foreman Towns was instructed to and did direct the claimants to work in connection with the flasher light signal installation. On this day, however, they were employed on this work for only 3 hours. On the morning of November 12, Foreman Towns received a letter from the Division Engineer, instructing him to inform the claimants that the work which they were to perform was laborers' work and would be paid the rate of pay applicable to their gang. Foreman Towns read the letter to the claimants. Foreman Towns states, and the claimants admit, that they did not notify him in writing at the close of the days November 12 and November 15, on which they worked respectively 8 hours and 4 hours in connection with the flasher light signal installation, that they claimed a higher rate of pay. Foreman Towns asserts that the claimants were not competent to perform any work in connection with this installation other than common laborers' work, and furthermore they did not perform any other work. It is notable of the record in this case that neither the claimants nor their representatives claimed that the work performed was other than common labor.

It is necessary to bring in the foregoing details of the record with respect to that portion of the Opinion of the Board referring to the carrier's waiver of the condition in Rule 46 (a).

Another notable feature of the record, entirely disregarded in deciding this case, is the showing by the carrier of the practice with respect to the use of section laborers on other work not strictly a part of the every day routine duties of section laborers, including work of the character complained of in this dispute, extending over a long period of years, and to which exception was not taken by the employes or their representatives.

A System Maintenance of Way Adjustment Board was organized on the property on March 24, 1930, and existed until October 24, 1934. During the period of its existence the carrier cities eight instances of the use of section labor in connection with signal work, in none of which were there any claims. From April, 1935, to August, 1937, carrier cites ten instances of installation of crossing signals where section laborers were used, as in the instant case, and no claims were filed. The carrier cites numerous instances of section laborers mixing and depositing concrete in highway crossings, as showing that that is not work foreign to the Maintenance of Way Department but in fact a part of their routine duties. The carrier shows other typical instances of the use of section laborers in other than Maintenance of Way work, such as digging holes and setting telegraph poles, handling materials for the Mechanical Department, assisting the Mechanical Department in setting storage tanks, and other instances of common labor performed outside of the Maintenance of Way Department, in none of which were claims made that the employes were entitled to a higher rate of pay—all of which is to show the interpretation placed upon this agreement over a period of years by the parties themselves, as indicated by their acts. There is no fairer guide to the meaning of an agreement than the conduct of the parties under it over a term of years. The courts have so held in the following language:

> "What the parties to a contract do during its life is persuasive evidence of what the contract was. 'Tell me', said a common sense judge, 'what the parties have done and I will tell you what their contract means.' " (64 Fed. (2d) 42).

> "There is no surer way to find out what the parties meant than to see what they have done." (95 U. S. 269).

"The action of the parties in pursuance thereof is the strongest evidence of their intentions. This is a well-established universal rule for the interpretation of contracts where the meaning is doubtful." (42 Fed. (2d) 681).

Williston states the principle thus:

"The interpretation given by the parties themselves to the contract as shown by their action will be adopted by the court, and to this end not only the action but the declarations of the parties may be considered."

If the language of the rule were ambiguous we would have the conduct of the parties as a guide to its meaning and interpretation, but here the language of the rule is clear and unmistakable, and their previous conduct under it was thoroughly in consonance with its language and intent.

The Opinion of the Board starts off with the declaration that the claimants were assigned to perform certain **work of common labor.** It then poses the two main issues in the following language:

"(1) Whether carrier under the rules of the agreement between the parties was entitled to assign Maintenance of Way employes to assist a signal crew and to pay them at the schedule rates as Maintenance of Way men.

"(2) Whether the claimants, assuming that their claim is otherwise well founded, sufficiently followed the procedures established by the rules of the agreement to perfect their claim."

No. (1) is a restatement of the claim in different language from that used by the petitioners, apparently for the purpose of drawing from it the conclusions which follow in the award.

The language of the claim is, are the claimants entitled, under the provisions of Rule 46, to the difference between the section laborers' rate of pay and signalmen helpers' rate of pay, while doing work as indicated in the joint Statement of Facts. The claim ties in specifically with Rule 46 (a) of the Maintenance of Way agreement. The issue as posed by the referee encompasses a broader field, affording an opportunity for philosophizing on the question of departmentation of employes.

The first condition of Rule 46 (a) is that employes assigned for 4 hours or more per day to a **higher classification** shall receive the higher rate, etc. The issue to be determined in this case was not the right of the carrier to assign employes to work of a higher classification—the main issue was, did the carrier assign the employes to work of a higher classification. The claimants were employed as common laborers. That was their regular assigned routine employment. It contemplated the use of tools ordinarily employed by railroad section laborers. On the days in question, employing the same tools, they made an excavation for a concrete foundation, dug ditches, back filled, etc. The referee says that this was work of common labor. If it was work of common labor, then the claimants were not assigned work of a higher classification.

It maters not who may have performed this work, if the section laborers had not been called upon to perform it, nor what their classification might have been, nor their rate of pay. These men were working under a specific contract with definite and explicit provisions on the subject matter of this dispute. It is only by meeting the conditions of that contract that they may become entitled to a higher rate of pay. If the conditions of that contract are met, the next question would be the measure of the benefit to be accorded the employes under it. If it were found that the claimants were employed in a higher classification for the period in question, thereby

becoming entitled to a higher rate of pay, we would next cast about for a rate of pay applicable to such higher classification. For the purpose of argument, adopting the referee's view that we might explore other contracts, it might then be appropriate to turn to Rule 5 of the Signalmen's agreement, cited by the petitioners, to see whether they were employed in the classification there defined. But unless and until we find under the terms of the agreement under which these claimants were employed that they have performed work in a higher classification, no other question arises, and there is no need to look further.

The Opinion declares, in the seventh paragraph, that the positions to which the claimants were moved were of a "**higher classification**" if for no other reason than that they carry higher rates of pay. The very question to be decided is thus made the fulcrum of the lever to hoist these claimants to the position sought. Still attempting to hold to the first premise, that the work performed was common labor, it nevertheless seems to recognize that it does not lend itself to the conclusion sought and so, says the Opinion, *regardless of the character of work performed, mayhap these claimants* found it more congenial to perform work connected with this signal installation than they would have found the same work not so associated; ergo, *signal helpers are of a higher classification than section laborers; ergo, the* claimants are signal helpers. But the rule under which this claim is prosecuted comprehends no such situation; congeniality is not the criterion. It *requires that the claimants to be entitled to a higher rate of pay shall* be assigned to work of a higher classification.

It is in the eighth paragraph, however, that we find the crux of this award. There the referee lays down his philosophy on the departmentation of workers, and apprehends that if the carrier is permitted to do what he alleges it did in this case that all collective agreements would be placed at the mercy of the employer.

It is neither the province nor the privilege of this Board to evolve or impose a curative philosophy for fancied ills; its duty is defined as being the adjudication of disputes growing out of the interpretation and application of agreements, and I hold that to use it as a sounding board for individual philosophies is to lose the opportunity afforded for a helpful service and to worse confound the confused situation that it is our duty to simplify and compose. In its awards this Board should hew to the line and render its decisions in accordance with the rules of the agreements between the parties.

The second sentence of Rule 46 (a) requires that an employe contending for a higher rate of pay shall notify his immediate superior at the close of the day in writing, stating his reasons for claiming the higher rate. In this case the claimants were not initially used on the work in connection with the installation of flasher light signals. They laid claim to the work on the grounds that they were older employes than the four new men picked up for that purpose, and asked that it be given to them. On the morning of the first day covered by this claim, they were told that they would be used on the work they requested but that it would not pay the higher rate because it was nothing more than laborers' work such as the routine maintenance work to which they were regularly assigned. They did not therafter on that or subsequent days notify the section foreman, their immediate superior, that they were claiming a higher rate of pay. They utterly failed, therefore, to meet that requirement of the rule.

How does the Opinion dispose of the failure of the claimants to comply with the second provision of Rule 46 (a)? In the first place, it says it is a provision not common in collective agreements. Even granted, what of it; it is a part of this agreement and a part of the very rule the employes invoke. They were therefore fully cognizant of it. It next says that the

record throws no light on its purpose, and professes a skepticism as to its utility. It is noteworthy that no difficulty was experienced in determining the purpose of the first part of Rule 46 (a), though no suggestion of the purpose described is contained in the record or the rule itself. It is surprising, therefore, that any difficulty should be experienced by the simple requirement that an employe who thinks he is entitled to a higher rate of pay should inform his immediate superior of that fact at the close of each day, stating his reasons therefor.

Is the provision confusing, or does skepticism as to its utility prompt the undertaking to write it out of the agreement? And how is it undertaken? The Opinion says it is arguable that, since the carrier had notice of the request of the claimants before they began work, it is entitled to no other notice. But what of the employes who were on notice before they began work that they would receive no higher rate of pay for it; and what of the right of election of the claimants? They could have withdrawn their request for this work when notified that they would not receive a higher rate of pay and have permitted the newly hired men, who were not claiming a higher rate, to do the work. Instead, however, they elected to accept the work, although notified that no higher rate would be paid them. And knowing what the rule required, they further failed on both days to notify their forman that they were claiming a higher rate of pay. Had they so notified the foreman at the end of the work day, November 12, he could have protected his employer against any further claim by using the newly hired men for this work on November 15. Is it considered that this action on the part of the employes constituted a waiver of the higher rate of pay? Indeed, no. The Opinion says the waiver was on the part of the carrier, that by informing these men before they performed any work on this assignment they would not be accorded a higher rate of pay it waived all future notice. A search of Williston's great work on Contracts indicates that he is as ignorant as the writer of any such construction, interpretation, or doctrine with respect to a waiver under an agreement. Any waiver is on the other side. The employes informed of the rate to be paid unprotestingly performed the work and accepted the money, knowing that written claim was required at the end of each day if they intended to insist on pay other than that specified in the offer under which they worked; they did not give the notice required.

This award is unsound in its reasonings and in its conclusion, and distinctly harmful in its philosophy. It is a reasonable assumption that the parties to an agreement address their minds to its performance and not to its breach. This Board can be helpful if it will determine in the disputes presented to it, in simple language, the proper interpretation or application of portions of agreements in dispute. If it uses its awards to project individual views in lieu of the terms of agreements, the effect can only be harmful, for thereafter no one will know whether to undertake to adhere to the terms of agreements or to undertake to apply the latest philosophy expressed.

(Sgd.) GEO H. DUGAN

FURTHER DISSENT—AWARD No. 674, Docket MW-712

Though concurring in the main with the dissent by Member Dugan, particularly as to disagreement with the conclusions of the award, separate dissent is made with the purpose of emphasizing the arbitrary conclusions, the breaks in the line of reasoning, and the deductions thereupon in the Opinion of Board of the award which distort the intent of the agreement and enter confusion into the practical conduct and performance of the class of work, common or unskilled labor, which only was involved in this dispute, viz:

In the sixth paragraph of the Opinion it is declared that the purpose of this rule (Rule 46) is ".....to protect such agreements and employes

by restraining the carrier from moving employes from one type of work to another in an arbitrary manner." The wording of the rule certainly does not say that; its basic statement, from which base its purpose might be explored, plainly says ".....an employe performing work in a higher classification for four hours or more on any day shall be allowed the higher rate of pay for the entire day....." There is naught in that portion of the rule or any other portion indicating that it had for its purpose restraint upon the carrier in the use of employes on work in a higher classification.

In the seventh paragraph of the Opinion the award again accepts ".....the fact that the employes in the new assignment were performing the same kind of work they would have been performing under their normal assignments,.....", — this being a restatement of the declaration in the first paragraph of the award that "....the carrier assigned the claimants,....., to perform certain work of common labor required by a signal crew in the installation of grade crossing flasher-light signals .....", but, through a statement of generality in the last sentence of the seventh paragraph, it leaps to a declaration which evidently becomes the foundation for the conclusion, represented by the award, that in the immediate situation involved in this dispute, these claimants thus were serving as signal helpers. That leap was made in the statement in the seventh paragraph, following the acceptance of the fact that the employes were performing the same kind of work, (i.e., common labor), which reads: ".....*,* the employes may have found the work with a signal crew more congenial and occupationally more promising than the work with a section crew." *It is submitted that neither the facts of record,* or of general knowledge of the use of common labor of Maintenance of Way departments of railroads, nor the application of precise connected logical reasoning would justify such conclusions.

The broad generalization as to the principle of "departmentation of workers, etc." which follows in the eighth paragraph of the award is evidently a corollary of this faulty logic, and, though it is not of pertinent bearing upon this particular dispute and the rule involved therein, it adds simply as an expresion of view to serve as an apparent justification for the award as rendered, which does violence to the intent and purpose of the agreement, as well as create confusion in established practices in the performance of work of common labor.

(Sgd.) C. C. COOK
(Sgd.) R. H. ALLISON
(Sgd.) A. H. JONES
(Sgd.) J. G. TORIAN