

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Angus Munro, Referee

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES**

**COLUMBUS AND GREENVILLE RAILWAY COMPANY**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood:

(1) That the Carrier violated the agreement when it furloughed Section Laborer George Taylor on December 8, 1949 and retained Section Apprentice J. E. Bailey in service;

(2) That Section Laborer George Taylor be paid at the Section Laborer's rate of pay for wages lost since December 8, 1949 due to Section Apprentice J. E. Bailey being employed in Taylor's home crew at Columbus, Mississippi.

**EMPLOYEES' STATEMENT OF FACTS:** George Taylor entered the Carrier's service as a Section Laborer at Columbus, Mississippi, November 26, 1945.

J. E. Bailey entered the service of the Carrier as a Section Laborer at Heathman, Mississippi, August 14, 1946 and was promoted to Apprentice Foreman February 4, 1948. On December 8, 1949, Apprentice Foreman Bailey was transferred to the Columbus Section, and on the same day section Laborer Taylor was furloughed. Apprentice Foreman Bailey was employed on the Columbus Section until January 27, 1950.

During the period December 8, 1949 to January 27, 1950, Section Laborer Taylor continued on furlough. During the period of time that Bailey was employed on the Columbus Section, he performed the duties of a Section Laborer.

Claim was filed in behalf of Section Laborer Taylor, such claim requesting that he be paid at the Laborer's rate for each day he was on furlough and Bailey performed the duties of a Section Laborer on the Columbus Section.

Claim was declined.

The agreement in effect between the two parties to this dispute, dated September 19, 1949, and subsequent amendments and interpretations are by reference made a part of this Statement of Facts.

**POSITION OF EMPLOYEES:** Rule 16 of the effective agreement reads as follows:

**OPINION OF BOARD:** Petitioner alleged violation of Rule 16 of the Schedule in that one Taylor was furloughed from his gang and replaced by one Bailey to perform the duties which Taylor was entitled to protect.

We shall first dispose of Carrier's plea that claim herein be not considered by reason of non-compliance with Rule 25 of the Schedule. We do not agree with Carrier. The rule referred to does not contemplate the Brotherhood may not raise the question of non-compliance or of violation. We think said rule refers to action taken by Carrier with reference to a violation or alleged violation by an employee of an operating rule.

Carrier next objected to consideration of two (2) letters, one (1) written by Bailey and the other by the gang foreman in that said letters were not used in the negotiations on the property. Petitioner claims Carrier refused to negotiate on the property up to and including the highest designated official. However, just who is correct does not determine this case.

The question to be resolved is not whether Carrier was within its rights in engaging the services of Bailey at the time it did in the capacity it did or the right of Carrier to furlough Taylor at the time it did and for the reason it did but rather did a substantial part of the work performed by Bailey consist of work Taylor had a right to protect? The Board is convinced Bailey did perform such duties.

**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 Schedule was violated.

#### AWARD

Claim sustained in accordance with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: A. I. Tummon  
Acting Secretary

Dated at Chicago, Illinois, this 30th day of March, 1951.