# Award No. 6902
# Docket No. MW-6831

## NATIONAL RAILROAD ADJUSTMENT BOARD

## THIRD DIVISION

**A. Langley Coffey, Referee**

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## PARTIES TO DISPUTE:

## BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

## CHICAGO GREAT WESTERN RAILWAY COMPANY

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

(1) The Carrier violated the effective Agreement when it assigned section laborers P. Ramos, Sr., P. Garcia, L. C. Ritter, L. C. Larson, Paul Ramos, E. E. Campbell, H. Stolfus, W. W. Bothke, W. G. Dickman, J. R. Pirillo, C. Grasco, and N. Tangari to leave their regular headquarters to perform service at Des Moines, Iowa, and at Beverly, Missouri, from April 23, 1952 to May 10, 1952 (both dates inclusive) and failed to compensate the aforesaid employes at the applicable section laborer's rates of pay;

(2) The Carrier further violated the Agreement when it failed to compensate the aforesaid employes at the section laborer's time and one-half rate of pay while traveling from and to their regular headquarters by other than passenger train or other public conveyance;

(3) The Carrier further violated the Agreement when it failed and refused to reimburse the Claimants for the cost of meals and lodging incurred while away from their regular headquarters during the period herein involved;

(4) The Claimants be allowed the difference between what they were paid at extra gang laborer's rate and what they would have received at section laborer's rate of pay during the period herein involved;

(5) The Claimants be allowed the difference between what they were paid at straight time rates and what they would have received at section laborer's time and one-half rate for the time consumed in traveling from and to their regular headquarters;

(6) The Claimants be reimbursed for the cost of meals and lodging incurred while working away from their regular headquarters during the period herein involved.

**EMPLOYES' STATEMENT OF FACTS:** Account of washouts occurring in the vicinity of Beverley, Missouri on April 23, 1952, the Carrier deemed

While traveling from and to Oelwein in camp cars all members of Extra Gang No. 9 were compensated precisely in accordance with Rule 30(a) reading:

> "Employes required by the management to travel in camp cars, either on or off their assigned territory, will be allowed straight time traveling during regular working hours, and, for Sundays and holidays, during hours established for work periods on other days."

As previously stated, work performed at Des Moines (rail relaying, tie renewals and line changes) and Beverly (emergency work occasioned by inclement weather) was extra gang work—see Rule 26(g) of Supplemental Agreement dated August 9, 1950, reading:

> "Laborers in seasonal extra gangs, whose employment is temporary in character, when engaged in work not customarily done by section or maintenance gangs, such as reballasting and rail relaying, including tie renewals, ditching and repropping in connection therewith, bank widening, grade and line changes, and emergency work occasioned by inclement weather, overtime, exclusive of meal period, will be paid at the minute basis as prescribed in Paragraph (b) of this rule. Such seasonal extra gangs will not be worked in the place of regular section or maintenance gangs."

Claimants were compensated in accordance with applicable rules of the governing agreement; claim is not supported by any rule, practice or agreement in effect on this property and should be denied.

(Exhibits not reproduced.)

**OPINION OF BOARD:** Out of the facts of this case, as above stated, there arises a question of rules interpretation which will be dealt with more specifically, later. The basic facts are that an extra gang was employed at Oelwein, Iowa, consisting of a foreman and 29 laborers, 14 of whom were section laborers in furlough status. There were cooks and others making up the usual complement of such a gang. It will suffice to say for the purposes of this case that an extra gang, as such, may work under the Agreement, in effect here, at any point on the railroad under certain circumstances, irrespective of seniority districts, and, while the extra gang was at Oelwein the furloughed section laborers whose rights are in question, were properly used as members of the gang.

The dispute concerns the status of these furloughed section laborers when they went onto another seniority district, accompanying the extra gang with which they had been working while on Claimants' seniority district.

The case is not one of section laborers exercising rights, but concerns their use by the Carrier in its service on a seniority district other than their own. If they were used contrary to the Agreement, it makes no difference so far as the violation is concerned, whether they volunteered for the service or whether the service was required of them. It is the Agreement and not individuals with which we, as a statutory Board, must concern ourselves.

While the precise question before us is what, if anything, is owing twelve (12) Claimants, the determination of contract violation first must be made. The recovery of additional compensation, if allowed, is only incidental after and in event it first can be determined that rights under the Agreement have been breached.

If, at all times in question, Claimants were properly classed in service as members of the extra gang, they have been paid all that is due them. If, on the other hand, they had no standing in the extra gang when it left Oelwein, the effect of the Carrier's action, under the facts and circumstances of this case, was to use them as regular section laborers and they should be paid accordingly. It cannot be said they were neither fish nor fowl for reasons we shall undertake to state and show.

A furloughed employe is one who is still under contract with the Carrier so long as he continues to qualify under said contract, except the right to work and to be paid under rules of his craft and class has been suspended during such time as the Carrier has no work for him or to which he properly can lay claim. The instant Agreement, Rule 10(d), allows the furloughed employe to catch extra work when and during the time the extra gang is working on his seniority district. As a condition and consideration for this work opportunity, it has been agreed, on the furloughed employe's behalf, that he will work under the pay rules and other conditions of employment for extra gangs. It is being asked of us that we extend this pay practice to situations where and when the furloughed employe accompanies the extra gang to work on another seniority district.

It would make a farce of the Rules of Agreement to hold with any contention that after a furloughed employe once attached himself to an extra gang, he could be moved and used all over the system under pay rules and working conditions peculiarly designed for extra gangs. An employe's seniority as a section hand and the right to do regular maintenance work might be lost to him and others for all time, and that which is intended as a contract would operate only at the wish, will, want and call of one party to the Agreement. We do not believe any such absurdity was agreed to, or that any such exaction was intended of the furloughed employe in return for the opportunity to catch some extra work while on furlough.

Accordingly, we hold that it is clearly implied by Agreement that furloughed employes are permitted to work and to be classed as members of extra gangs only when such extra gangs are working on the furloughed employe's seniority district, and at other times and under other conditions, pay and other rules of the Agreement apply as though the furloughed employe had not worked with the extra gang on his seniority district.

Therefore, when the Carrier deemed it advisable and desirable to use furloughed section laborers off the Illinois Division where they had been working with the extra gang, to expedite restoration of tracks, account of washout, in vicinity of Beverly, Missouri, on the Iowa Division, it was augmenting its regular forces of section laborers, and pay rules on which Petitioner relies are applicable in this docket. Claims are good.

**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 Carrier violated the Agreement it has with its Employes.

AWARD

Claims sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 18th day of February, 1955.

# NATIONAL RAILROAD ADJUSTMENT BOARD
# THIRD DIVISION

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## INTERPRETATION NO. 1 TO AWARD NO. 6902
## DOCKET No. MW-6831

**NAME OF ORGANIZATION:** Brotherhood of Maintenance of Way Employes.

**NAME OF CARRIER:** Chicago Great Western Railway Company.

Upon application of the Carrier involved in the above Award, this Division was requested to interpret the same because of an alleged dispute between the parties as to its meaning and application, as provided for in Section 3, First (m) of the Railway Labor Act.

Pursuant to Section 3, First (m), Railway Labor Act, amended, Carrier seeks an interpretation of the Award as concerns questions:

1. Is it intended that Iowa Division Furloughed section laborers employed in Extra Gang No. 9 be compensated in the same manner as Illinois Division furloughed section laborers during the time extra gang was on the Iowa Division?

2. Is it intended that claimants be allowed time and one-half for traveling when required by the Management to travel in camp cars?

3. Does the award prohibit the future right of furloughed section laborers to voluntarily work under rules and working conditions applicable to extra gang laborers when said gangs are not located on their seniority district?

Question No. 1. The effect of the award in this case is to sustain all claims of named claimants and it was so intended.

Had we known then what we know now from evidence supplied for the first time after the record was closed and the award entered, we should have denied the Grasso and Tangari claims.

In the submission, only passing mention was made of the fact that furloughed section laborers from both the Illinois and Iowa Divisions were in Extra Gang No. 9 at Colwoin on the Illinois Division.

The Carrier contended, while handling the dispute on the property, that claimants had been offered an opportunity to move with the extra gang and since they exercised that choice they were properly compensated in accordance with rules and rates of pay provided by the rules schedule for Extra Gangs. It continued to argue that premise as one of its major contentions before the Board.

Claimants were named and the Organization advanced the theory that when furloughed section laborers were taken away from their seniority district they no longer could be considered as working in said gang. That

was the Carrier's cue to come forward and tell us who, of named claimants, had rights on the Division where the disputed work was performed. Instead, we are told by the Carrier, at a later place in the docket:

> "In other words, while Claimants had no seniority rights as section men at Des Moines and Beverly they did have the same employment relationship as the remaining members of Extra Gang No. 9."

Now, after the record is closed and the award made a matter of record, Carrier comes forward for the first time with proof that Tangari's and Grasso's names appear on the Iowa Division seniority roster of section laborers. It's too late. See our Award No. 6935 for an expression of our views on finality of Board Awards and attempts to introduce new evidence after case is once closed.

Question No. 2 The effect of sustaining the portion of the claim to which this question relates was to hold that travel time under the circumstances here present, was to be computed and compensated for as time "worked" in accordance with Rule 26 (b), since, in our opinion, the Carrier did not avail itself of the appropriate travel time Rule 30 (b) for other than extra gangs.

Question No. 3. This portion of the request for an interpretation is held to be an attempt to have the Board go beyond the clear import of language in the award which provides:

> "Accordingly, we hold that it is clearly implied by Agreement that furloughed employes are permitted to work and to be classed as members of extra gangs only when such extra gangs are working on the furloughed employe's seniority district, and at other times and under other conditions pay and other rules of the Agreement apply as though the furloughed employe had not worked with the extra gang on his seniority district."

The foregoing is not to be construed as a prohibition against the Carrier's right to use furloughed section laborers on a voluntary basis on other than their seniority district; provided, the furloughed section laborers on a given seniority district first be afforded the permissive right to work in the extra gang while on their seniority district; and, provided further, that the pay and other rules of the schedule for section laborers apply while the said section laborers are working in Extra Gangs off their seniority district.

The question is too general to admit of more by way of interpretation.

Referee A. Langley Coffey who sat with the Division, as a member, when Award No. 6831 was adopted, also participated with the Division in considering the application for interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 15th day of July, 1955.

**DISSENTING OPINION, AWARD 6902, DOCKET MW-6831 and INTERPRETATION thereof, Serial No. 155**

Here is a case where a dispute arose concerning the interpretation of an award and an application for interpretation was made to this Board. We

are required by law to make an interpretation of the award "in the light of the dispute". [45 U.S.C., 3 First (m)]. The referree has said, "It's too late." It is not. Time is not involved. As a matter of record fact, it was pointed out that furloughed section laborers from the two divisions were concerned. Certainly then, even under the holding of the award itself there could be no valid claim from the laborers who were used on their own seniority district. The interpretation blandly says that had we known the names of the men **in addition** to the undisputed fact that there were such men, we would have denied their claim; but, because we did not know their names, we will not deny their claims. The effect of the award upon these men constituted the dispute which we have no authority to circumvent under our statutory duty to make an interpretation.

The holding that travel time should be compensated at the overtime rate is so completely foreign to even a slanted interpretation of the travel time rule as to have no standing whatever as decision language in the field of interpretation. The reason is this: The rule provides with unquestionable clarity that "employes", not certain kinds of employes, not employes in a certain category, but **employes,** "required by the Management to travel in camp cars, either on or off their assigned territory, will be allowed straight time". The rule further provides that "Employes not in camp cars will be allowed straight time". Yet, the referree goes to Rule 26 (b). That is the general overtime rule which has nothing whatever to do with traveling but relates to all time "**worked** preceding or following and continuous with a regularly assigned eight hour work period". Thus the violence of the holding in the award is the bald error of applying the general overtime rule to the special conditions specifically written into the contract to provide for straight time in any circumstances of employes traveling either in or not in camp cars and either on or off their assigned territory.

The so-called interpretation of Rule 10 (d) has, as did also the original holding in the award, fallen prey to the facility of supplying words or qualifications as an aid de crutch to interpretation. Rule 10 (d) says that "Furloughed section laborers will be permitted to work in extra gangs when such extra gangs are working on their seniority districts." This is an affirmative provision and has been so throughout the history of the use of furloughed section men with extra gangs. It is here interpreted, however, as being a negative provision and that, of course, necessitated the referee supplying the word "only". That is a term of the greatest limitation and the word is not found in Rule 10 (d) at all, so that when the referee says he holds that furloughed employes are permitted to work as members of extra gangs **only** when they are working on the furloughed employes' seniority district, he is striding far beyond the rules of construction and is adding provisions for facility. The role of a tribunal limited to interpretation of contract provisions is just not that simple.

If we were to refuse to accommodate error of comprehension, we would be unrealistic ourselves, but when such error is not only patent but reiterated, we must dissent and our reasons are, we think, most apparent.

/s/ E. T. Horsley

/s/ W. H. Castle

/s/ R.M. Butler

/s/ C. P. Dugan

/s/ J. E. Kemp