

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES  
MISSOURI PACIFIC RAILROAD COMPANY**

**STATEMENT OF CLAIM:** "Claim of Fred Ackerman, J. E. Troup, J. M. Frazee, Section laborers, working on Section No. 5, Chiles, Kansas, claims pay for four (4) days each covering time lost in last half of November, 1936, by being required to lay off while extra gang laborers were permitted to work on this section, in which they lost thirty-two (32) hours each at thirty-five (35) cents per hour, making a total of \$11.20."

**STATEMENT OF FACTS:** Employees state the facts as follows:

"On the 24th day of November, 1936, notice was given that the three laborers named herein, listed in Statement of Claim and listed in Exhibit No. 5 be laid off the remainder of that month, resulting in each of the three (3) men losing four (4) days of eight (8) hours each day, while on these dates, November 25th, 27th, 28th and 30th, an extra gang was retained and worked a part of the time on Section No. 5, where these men were employed."

Management states the facts as follows:

"On November 25, 1936, our M. of W. forces on the Central Kansas Division seniority district were laid off, the reduction displacing, among others, the following section laborers on Section 5 located at Chiles, Kansas:

|               |                |           |
|---------------|----------------|-----------|
| J. M. Frazee  | seniority date | 9-6-26    |
| Fred Ackerman | "              | " 10-1-26 |
| J. E. Troup   | "              | " 4-1-27  |

"The following rules of our wage agreement with the M. of W. Employees dated January 1, 1928, are applicable to this case:

'Rule 2-(a): Seniority begins at the time the employee's pay starts.  
...'

'Rule 2-(c): Seniority rights of laborers as such will be restricted to their respective gangs, except that when force is reduced, laborers affected may displace laborers with least seniority on their seniority district. ...'

'Rule 2-(d): Seniority rights of laborers... will be restricted to the territory under jurisdiction of only one roadmaster, ...'

'Rule 2-(e): Laborers will have the right, when forces are again increased, to return to their original section or gang upon making proper application.'

'Rule 3-(a): When force is reduced, the senior man in the sub-department, on the seniority district, capable of doing the work, shall be retained.'

"The claimants when laid off on November 25, 1936, were privileged if they so elected, to displace laborers with the least seniority on their seniority district under Rule 2-(c). Their failure to exercise this right could not react as a penalty upon the carrier and there has been no evidence presented that they sought the privilege afforded them under the wage agreement."

**OPINION OF BOARD:** This claim arising from the laying off of the section men at Chiles, Kansas, in lieu of laying off junior men in effecting reduction of expenses, alleges a violation of the agreement and particularly of Rule 3-(c) relating to reduction of expenses as evidenced by the fact that during the period of the lay off an extra gang was used to perform track maintenance work on the Chiles section on which work the claimant employes of that section gang could have been used.

On account of reduction in appropriations it became necessary to reduce maintenance expenses during the latter part of the month, and due to the lateness of the period the force reduction necessary to accomplish such reduction in expenses was not possible through a lay off of junior men; hence all gangs engaged in track maintenance on this roadmaster's district excepting one terminal gang were laid off four days. An extra gang performing work on a line and grade change for which the State of Kansas was paying were permitted to continue on that job.

Some of the laid off force on other sections were used during the four-day period of their lay-off on necessary work arising at several locations on the district, included among which was work on the Chiles section for which the extra gang from the line and grade change job was used. Though the work on the Chiles section was such as would have normally been assigned to an extra gang and was here thus assigned, it would have been practical for the Chiles section gang to have performed it, and under the conditions here prevailing this section gang should have been given preference in its assignment.

**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 based on the record in this case it is found the work assigned to the extra gang on the Chiles section during the period of lay off could have been as a practical matter performed by that section gang, and to that extent the claimant employes should now be compensated.

#### AWARD

Claim sustained in accordance with above finding.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson,  
Secretary.

Dated at Chicago, Illinois, this 7th day of October, 1937.