Award No. 10599
Docket No. CL-10366

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION
(Supplemental)

David Dolnick, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES

THE NEW YORK, NEW HAVEN & HARTFORD RAILROAD

STATEMENT OF CLAIM: Claim of the System Board of Adjustment that,

1. William J. Howard, Jr., Janitor at Harford Passenger Station, Hartford, Conn., be paid for April 15, 1957 and all subsequent dates, the Janitor's rate of $14.72 per day with subsequent adjustments because a Mr. D. Gary, Red Cap, not covered by the scope of our Agreement, was assigned to perform Janitor's work at that point,

2. Mr. Gary, Red Cap at Hartford Passenger Station, be removed from the roster of Janitors, at Hartford, Conn.

EMPLOYES' STATEMENT OF FACTS: Starting on June 3, 1956, Mr. Gary, appearing on the Red Caps' roster, started working in a spare capacity as a Janitor at Hartford. For example, Mr. Gary worked:

RED CAP	JANITOR
Dec. 1956 11½ days	7 days
Feb. 1957 4 days	1 day
Mar. 1957 9 "	
Apr. 1957 1 "	5 days
May 1957 3 "	7 "

On March 6, 1957, Mr. William Howard, Jr., was also hired by the Station Master at Hartford, as a Janitor, worked the week ending March 9th, week ending March 17th, one day March 26th and one day April 19th, and thereafter was placed on a furloughed status, although ready, willing and able to work.

POSITION OF EMPLOYES: Management is here assigning an employe (Gary) subject to an Agreement of another craft and still working under the agreement of that craft, to work covered by the clerical agreement. Gary, showing on the 1957 Red Cap Roster, is performing janitorial work covered

As the moving party, it is incumbent upon the Employes to show that their request is supported by the rules of the agreement. This, they have not done. But the ardor with which they have progressed this claim tempts us to believe that their request is motivated either by desire to persecute the individual, or an overzealous effort to extract penalty payment from the Carrier for work not performed.

There is no rule in the Agreement that prohibits Mr. Gary from performing extra work as a Janitor when required. Mr. Gary has faithfully fulfilled Carrier's requirements and has been always ready and willing to perform the work when required. By his willingness to serve (when it was difficult to get others to accept work account of temporary nature) it is indicative to Carrier that he is anxious to maintain railroad service and is making effort to be available and to secure regular assignment. Carrier respectfully urges that he not now be punished for being available and accepting this temporary work and that this work not be assigned to a junior employe already shown by the record as not being "reasonably available" and presently engaged in fulltime employment elsewhere.

Carrier contends that if and when a regular position becomes available in either classification, viz. Janitor or Red Cap, Mr. Gary would have to decide upon which roster he would remain; giving up all rights on the other.

The Carrier respectfully urges that this is the only fair and equitable conclusion and requests that your Honorable Board deny the claims in their entirety.

All of the facts and arguments used in this case have been affirmatively presented to Employes' representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: D. Gary was originally employed as a Janitor. On February 14, 1944, he relinquished his Janitor job and accepted a position of Red Cap. By accepting the new position, Mr. Gary forfeited and relinquished all of his seniority rights as a Janitor. Janitors and Red Caps are represented by separate labor organizations and the employes in the respective positions are covered by separate and distinct collective bargaining agreements. On November 5, 1954, Mr. Gary was furloughed from Red Cap position. Thereafter, he worked as an extra Red Cap one or two days a week and filled Red Cap positions while regular employes were on vacation.

On June 3, 1956, Gary was employed as a part time Janitor. There is some slight conflict in the Record on the date. The letter dated July 25, 1957, from Superintendent, R. J. Duggan to G. H. Holzer, Divisional Chairman, says that Mr. Gary "was employed under date of June 6, 1956, as a spare janitor at Hartford Station" (R 8). The Seniority Roster of Janitors for the Hartford Passenger Station published by the Carrier on January 1, 1958, shows Mr. Gary's seniority as of June 3, 1956 (R 30). The Carrier's Ex Parte Submission also states that because "Carrier had no spare Janitors . . . on June 3, 1956, Gary was hired to cover as a spare Janitor . . . ." (R 20). The Agreement between the Carrier and the Organization covers the position of Janitor while the position of Red Cap is covered by an Agreement between the Carrier and the United Transport Service Employes.

On March 6, 1957, the Claimant was "hired by Stationmaster Hipson as a Janitor. He worked the week ending March 9th — also the week ending Mar. 17th, and then one day Mar. 26 and 1 day Apr. 19th. Thereafter being in a furloughed status." This quote is from Mr. Holzer's letter of May 28, 1957, addressed to Mr. R. Duggan, Superintendent, which appears on page 5 of the Record. There is no evidence in the Record that Mr. Gary worked as a Janitor on the same dates worked by the Claimant. On the contrary, it can rightfully be assumed that Mr. Gary may have worked those days as a Red Cap, certainly not as a Janitor. The Record on page 2 shows that Mr. Gary worked 9 days as a Red Cap in March 1957, and did not work at all as Janitor in that month.

Thereafter, beginning on April 15, 1957, Mr. Gary was assigned as Janitor at the Harford Station. At the same time, he also worked as a Red Cap. Mr. Duggan wrote that while Mr. Gary was working as a spare janitor, "he has been covering spare Red Cap's work approximately one day a week" (R 6). In the same letter, Mr. Duggan wrote that "Mr. Gary shows on the 1956 roster with a date of June 3rd, 1956, and is on the 1957 roster". Mr. Howard was also on the roster as of March 6, 1957 (R 6). The Carrier listed Mr. Gary on both the Red Cap and Janitor seniority rosters simultaneously while the Claimant was also at the same time on the Janitor seniority. The Organization protested and requested that Gary's name be removed from the Janitor's roster.

Rule 47 of the Agreement states how working forces are reduced. Among other things, it says:

> "Furloughed or part-time employes shall, as needed, be used to fill resultant vacancies, temporarily or otherwise, or to cover spare work in their own seniority district provided they are qualified and reasonably available."

It is, obviously, clear that spare Janitor work at the Hartford Station should be performed by furloughed employes on the seniority roster covered by the Agreement. Further meaning was given to this Rule by the Carrier. In a letter dated February 1, 1952, written by Mr. E. B. Perry, Assistant Vice President-Personnel, to Mr. R. D. Farquharson, the Organization's General Chairman, Mr. Perry said, in part:

> ". . . The question that is raised is as to whether this employe, who has furloughed status from two seniority districts; i.e., a Division Roster and a Point roster, has the right to claim extra work under Rule 47 in both seniority districts.
>
> "In my opinion, such an individual having a dual furloughed status from two or more seniority districts cannot claim the right under Rule 47 to perform extra service in more than one of them." (R 12)

On the basis of Rule 47 and the Carrier's interpretation of that Rule, it logically follows that an employe who has dual seniority status in two separate job classifications, covered by two separate collective bargaining agreements with different Organizations, cannot claim the right to perform extra work in more than one of them. This is also supported by a setttlement of a claim. The Organization filed a claim requesting that "senior available clerks be reim-

bursed at the punitive rate of pay for the times this Railroad Trainman was used in our work". A railroad Trainman was used to perform mail room work. Mr. Perry wrote to the General Chairman under date of April 30, 1954 (Record page 16), in part, as follows:

> "The use of an employe working in another craft manifestly comes within the principle stated. The facts here do not differ from the Rae case, Docket 5242.
>
> "The claim will be sustained in favor of the senior employe on the mail room roster who was not working and available on the dates and during the hours the trainman was used, ..."

We have consistently held that an employe cannot hold seniority rights at the same time in separate crafts represented by different Organizations. He must elect on which roster to remain. See Awards 1244 (Danner), 5099 (Coffey) and 5200 (Wenke). In the absence of an agreement between the Carrier and both the Clerks and the United Transport Service Employes, Mr. Gary cannot simultaneously hold seniority rights as a Red Cap and as a Janitor.

The Carrier stresses the fact that Mr. Gary was furloughed as a Red Cap and that he "has not held a regular assignment as a Red Cap since November 5, 1954." In the re-hearing brief the Carrier says:

> "There is absolutely nothing in the contract between the parties, which constitutes the entire agreement, that prohibits the Carrier from employing new employes or furloughed employes from another craft. That being so the right remains unabridged."

With this we have no quarrel. The Carrier had every right to hire Mr. Gary as a spare time Janitor while he was on furlough as a Red Cap. Had Mr. Gary continued to work as a Janitor while on furlough as a Red Cap and had he not exercised his rights under the Red Cap Agreement and worked part time as a Red Cap he would have preserved his seniority rights on the Red Cap seniority roster and he would have had seniority rights on the Clerks roster. But that is not the case here.

Mr. Gary was hired as a spare time Janitor on June 3, 1956, while he was on furlough as a Red Cap (R 10). From that day until sometime during the week ending March 9, 1956, he rightfully remained on both the Red Cap and the Clerk's seniority rosters. Page 3 of the record shows that the Claimant, "William Howard, Jr., worked as a spare Janitor in the week ending March 9th and March 17th, one day March 26th, one day April 19th, which has not been denied by Management. Also, Gary worked in the week ending March 9th and March 17th as a Red Cap, proving beyond a reasonable doubt that he was not available for Janitor's work on those weeks, and, if so, why wasn't he used?" In a letter dated July 25, 1957, written by Mr. R. J. Duggan, Superintendent to Mr. G. H. Holzer, Division Chairman, (R 6) the Carrier said:

> "Due to no spare janitors at Hartford he was employed as a janitor and performed first service June 3rd, 1956 and has been available and covered all subsequent spare work since that time. **In addition, he has been covering spare Red Cap's work approximately one day a week."** (Emphasis ours.)

Nowhere in the record does the Carrier deny the Organization's evidence that "Gary worked in the week ending March 9th and March 17th as a Red Cap, proving beyond a reasonable doubt that he was not available for Janitor's work on those weeks. . . ." The record also shows that Mr. Gary did no Janitor work during the month of March, 1956 (R 2), And, the Carrier admits that Mr. Gary "has been covering spare Red Cap's work approximately one day a week."

While on furlough as a Red Cap, Mr. Gary retained all of his rights under the Red Cap Agreement, including the right to recall, the right to work on relief days and other absences of regularly employed Red Caps or on days when the Carrier needed a Red Cap at the Hartford Passenger Station. When Mr. Gary chose to work as a Red Cap in the week ending March 9th and in the week ending March 17th, he elected to accept an assignment in accordance with his rights under the Red Cap Agreement. Whether his assignment was full time or part time or whether it was temporary or permanent is immaterial. His election was made under that Agreement and he cannot then retain seniority on two separate craft seniority rosters covered by two separate Agreements in preference to an employe who was hired by the Carrier while he (Gary) was so working as a Red Cap. All of this the Organization has proved by a preponderance of evidence in the record.

The Claimant was hired on March 6, 1957, while Mr. Gary was working as a Red Cap. He established seniority rights under the Clerk's contract. Mr. Gary had no seniority rights on that date under the Clerk's contract because he had elected to exercise his seniority and work preference rights under the Red Cap Agreement.

The Awards cited by the Carrier are not in point. They do not determine issues based upon facts similar to those in this dispute. No useful purpose will be served to discuss and distinguish each of them.

It is the Carrier's position that the Claimant was not "reasonably available" under Rule 47. They say that the Claimant "was gainfully employed on a part-time basis as a handyman at the Avon Hotel, Hartford, Connecticut, from the week ending April 5, 1957, up to and including the week ending August 30, 1957." This, however, is not substantiated. The Carrier admits that it had "attempted to procure evidence from the Avon Hotel to verify this information, but the hotel people have been reluctant to furnish any statement". While we are not governed by strict rules of evidence, we, nevertheless, cannot accept statements which are not supported by clear and convicting evidence.

The Carrier also showed that the Claimant was employed as a Red Cap at the Trailways of New England Bus Terminal since the first week of September, 1957. Trailways of New England, Inc., filed a statement dated July 14, 1958, which appears on page 48 of the Record, and which reads:

"TO WHOM IT MAY CONCERN:

William Howard, Jr., will be made available to cover spare work on the new Haven Railroad at any time.

GLEN W. COVILL
Terminal Manager"

At no time did the Carrier call the Claimant to work as a spare time Janitor when the Claimant was not available. Gary was working one day a week as a Red Cap and was therefore, on the Red Cap Seniority Roster. He had no right to be on the Janitor Seniority Roster at the same time to the detriment of the Claimant.

Notice of third party interest was mailed by the Secretary of the Board to Mr. D. Gary on May 16, 1961. A Certified Mail Receipt bearing the signature of Drewey Gary and dated May 20, 1961, is in the file in this proceeding.

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.

AWARD

The claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 7th day of May 1962.

CARRIER MEMBERS DISSENT TO AWARD 10599, DOCKETT CL-10366

The Majority's decision in this case is replete with unwarranted assumptions and conclusions and is predicated upon a complete misunderstanding of the facts.

The Majority at the outset, disregarded one of the primary principles existing on this Board, namely that the Petitioner has the burden of proving every element of his claim. Applied to this case, it means the Petitioner should have been required to show by substantial evidence that (1) Carrier improperly permitted Mr. Gary to accumulate seniority on the Clerks' roster; (2) improperly assigned Mr. Gary to perform the work in question; (3) that Claimant could have been properly used to perform the work and (4) that he was available to perform it.

The record clearly shows that the Organization failed miserably in each of the four categories of proof necessary to justify a sustaining award, consequently, the Majority had only one recourse and that was to deny the claim. Instead, by making assumptions, either in the Claimant's favor or against the Carrier; by relying upon facts which had no part of the claim or the claim period; and by adamant refusal to give consideration to binding interpretations

from the property, the Majority has caused the rendition of a decision so erroneous in character, it defies logic to describe.

The Organization was first compelled to prove that Carrier improperly permitted Mr. Gary to acquire and accumulate clerical seniority. On this point the Majority says:

> "We have consistently held that an employe cannot hold seniority rights at the same time in separate crafts represented by different Organizations. He must elect on which roster to remain. See Awards 1244 (Danner), 5099 (Coffey) and 5200 (Wenke). In the absence of an agreement between the Carrier and both the Clerks and the United Transport Service Employes, Mr. Gary cannot simultaneously hold seniority rights as a Red Cap and as a Janitor."

However, one paragraph later the same Majority says:

> "* * * The Carrier had every right to hire Mr. Gary as a spare time Janitor while he was on furlough as a Red Cap. Had Mr. Gary continued to work as a Janitor while on furlough as a Red Cap and had he not exercised his rights under the Red Cap Agreement and worked part time as a Red Cap he would have preserved his seniority rights on the Red Cap seniority roster and he would have had seniority rights on the Clerks roster. * * *"

This is but one of the many inconsistencies appearing in this decision. The Majority finds an employe cannot hold seniority on two different rosters, yet they also find that he can. They hold that Carrier had the unrestricted right to hire and use Mr. Gary, still they find this right was restricted. The awards cited by the Majority were throughly and exhaustively explained and distinguished from the facts herein. The Majority simply ignored the explanation and in turn ignored the awards cited by the Minority which were on point, notwithstanding the Majority's assertion to the contrary. The reader can best judge this for himself by reviewing the facts of **Award 6261,** Referee Wenke, who it might be noted, was the author of **Award 5200,** relied on by the Majority. In **Award 6261,** Referee Wenke clearly indicated how he would handle the type of factual situation that we have been considering in our case. In that case, the employe involved was a roundhouse laborer and had seniority as such from February 5, 1947. He was placed on a furloughed status on August 10, 1949. At that time he obtained outside employment but then returned and hired as a clerk on September 13, 1949, and was assigned to the temporary position involved in that case. He continued to work in this position until February 5, 1951 when he quit to take training with the same Carrier as a machinist apprentice. During the period September 13, 1949 to February 5, 1951, he was a furloughed employe from the Laborers' roster, covered by the Firemen and Oiler's Agreement and he also held seniority as a clerk under the Clerical Agreement. This board, with Referee Wenke participating, could find no objection in the maintenance of this dual seniority, simply because the individual involved was not **regularly assigned** and working from two seniority rosters. In short, while he owned seniority on two rosters, he was not "carrying" such seniority in the sense that he was using it to the detriment of

employes under the Firemens' and Oilers' Agreement. He was carrying it and using it only with respect to the employes under the Clerical Agreement.

This decision should convince us that the statements made in earlier cases and relied upon in this decision were predicated on factual situations where the employe was working as a **regularly assigned** employe under two crafts and was not furloughed from another group as he was here.

The fallacy in the Majority's reasoning in this case becomes more pronounced by reviewing another statement made in the decision. On page 4, it is stated:

> "Mr. Gary was hired as a spare time Janitor on June 3, 1956, while he was on furlough as a Red Cap (R 10). From that day until sometime during the week ending March 9, 1956 (sic), he rightfully remained on both the Red Cap and the Clerk's seniority rosters. * * *" (Emphasis ours.)

This statement is made on the assumption that Mr. Gary had not worked part time as a Red Cap **prior** to March 9, 1957. However, the record, which the Majority was supposed to have reviewed in making its decision, does not support this. On page 2 of the record (1st page of Organization's Ex Parte Submission) it is shown that Mr. Gary worked 11½ days as a Red Cap in December, 1956, and 4 days in February, 1957 while, according to the Majority, he rightfully remained on both rosters. This is just another example of the lack of study given to this case.

Furthermore, there is nothing sacrosanct about the date of March 9, 1957. It is not even involved in the claimed period. Why it should be used as the date marking the separation between Mr. Gary's rightful and wrongful holding of Clerks' seniority is one of the more disturbing parts of this decision.

The Organization failed to prove Mr. Gary was not "reasonably available" and the Majority made unwarranted assumptions to cure the deficiency. Rule 47, quoted on page 2 of the decision, requires an employe to be "reasonably available" and this requirement applies to furloughed employes from the same or different crafts. Carrier contended Mr. Gary was reasonably available and challenged the Organization to disprove it. The Majority in its decision, takes up the cudgel for the Petitioner when, on page 4 they say:

> "Nowhere in the record does the Carrier deny the Organization's evidence that 'Gary worked in the week ending March 9th and March 17th as a Red Cap, proving beyond a reasonable doubt that he was not available for Janitor's work on those weeks. . . .' The record also shows that Mr. Gary did no Janitor work during the month of March, 1957 (R 2). And, the Carrier admits that Mr. Gary 'has been covering spare Red Cap's work approximately one day a week' ".

If the Majority would have taken the time to check the claim filed in this case, they would observe that it commences on "April 15, 1957" and does not involve any periods in March, 1957. Therefore, their reference to facts occuring

in March to support a claim made covering a period in April, where the Organization's own evidence (R., p. 2) shows that Mr. Gary worked only one day as a Red Cap cannot be justified or excused. It was incumbent upon the Organization to prove that Mr. Gary was not "reasonably available" to perform janitorial work in April, the claimed period, and we submit that Mr. Gary's use as a Red Cap for **one day** during the month of April could not disqualify him as being "reasonably available" for janitorial service during the same period even by the most biased observor. This is especially true under the subsequent interpretation of Rule 47 referred to by Carrier and set forth hereinafter.

The record before us clearly showed the Organization failed to prove that Carrier improperly assigned Mr. Gary to the janitorial work. On page 3, the Majority says:

> "On the basis of Rule 47 and the Carrier's interpretation of that Rule, it logically follows that an employe who has dual seniority status in two separate job classifications, covered by two separate collective bargaining agreements with different Organizations, cannot claim the right to perform extra work in more than one of them. This is also supported by a settlement of a claim. * * *"

Unfortunately, the Majority picked the evidence they wanted to accept which tended to support their conclusion but ignored a further interpretation ostensibly because they were unable to distinguish it.

The Carrier attached as Exhibits in this dispute, copies of correspondence between the Carrier's highest appeals officer and the General Chairman dealing with the subject of the decision referred to by the Majority, i.e., "the Rae Case". The Majority makes no reference whatsoever to this correspondence and this seems more than puzzling when the understanding reached at that time is reviewed in the light of the facts of this case. Exhibit "H" deals with a modification of the Understanding reached in the Rae Case and in prior decisions. It was agreed that the decision in the Rae Case would be modified to the extent that furloughed employes who **did not have** outside employment were involved. The pertinent paragraphs of that letter follow — (R., p. 59)

> "As I stated in my letter to Superintendent Donnelly, and repeated in my phone conversations with you, I think that the opinion given is a reasonable interpretation of the previous understandings which we have had relative to the requirement that a furloughed employe who desired to make himself available for spare work under Rule 47 must be available for all spare work and could not be permitted a selection as to particular days and hours in which he might be available.
>
> "You felt that a distinction should be made between a situation where an employe was furloughed from two or more seniority districts and held himself available for spare work on each district except, of course, when he was actually working on one district and could not be available on another, as distinguished from a situation of a furloughed employe who might have outside employment and desired to be available for spare railroad work only at times which would not interfere with his outside employment.

"I am agreeable **to an exception to the previous understanding insofar as the right of the furloughed employe to spare work in two or more seniority districts is concerned,** such an understanding to be made under the provisions of Rule 35, and with the further understanding that such furloughed employe could not claim the right to work more than one shift in the same twenty-four hour period if there were other furloughed employes available to work on the second tour of duty at the straight time rate, and, further, that the furloughed employe could not claim the right to work more than five straight time tours of duty in a work week. **Where work for the furloughed employe was open in two or more seniority districts on the same day the furloughed employe would be expected, subject to the limitations outlined above, to cover the first service for which called."** (Emphasis ours.)

This decision was concurred in by the General Chairman in his letter dated February 21, 1952, and a copy of that decision was furnished to the Local Chairman. The net result of this decision was to allow a furloughed employe, whether from two seniority districts under the Clerks' Agreement or from another craft working under the Clerks' Agreement, to request the right to be used **even where he may be performing spare work in two or more seniority districts (crafts).** It continues the prohibition against employes who are working in outside employment and this distinction was made at the behest of the General Chairman.

We should hardly have to point out that Claimant Howard falls squarely within the prohibition continued in effect by the parties and Mr. Gary falls squarely within the exception provided for; i.e., "an exception to the previous understanding insofar as the right of the furloughed employe to spare work in two or more seniority districts (crafts) is concerned." The claim filed with us and the decision reached are diametrically opposite the understanding agreed upon by the parties on the property both with respect to Mr. Gary's right to be used and with respect to Claimant's unavailability.

On the issue of Claimant's availability, disregarding for a moment, the understanding referred to above invalidating his **right** to be used, the Majority continues to make assumptions in Claimant's behalf and improperly places the burden of proof upon the Carrier to show that Claimant was not available when the burden should have fallen on Claimant to prove he was available. The Carrier assumed this improper burden and the Majority then states it needs more proof. On page 5 of the decision, it states:

"It is the Carrier's position that the Claimant was not 'reasonably available' under Rule 47. They say that the Claimant 'was gainfully employed on a part-time basis as a handyman at the Avon Hotel, Hartford, Connecticut, from the week ending April 5, 1957, up to and including the week ending August 30, 1957.' This, however, is not substantiated. The Carrier admits that it had 'attempted to procure evidence from the Avon Hotel to verify this information, but the hotel people have been reluctant to furnish any statement'. While we are not governed by strict rules of evidence, we, nevertheless, cannot

accept statements which are not supported by clear and convicting (sic) evidence."

Here the Majority has completely reversed the usual and customary procedure followed by this Board by requiring the Respondent to assume the burden of proof instead of the Petitioner. A decision predicated on such unorthodox and erroneous precedure can be given no merit.

On page 5, the decision continues:

"The Carrier also showed that the Claimant was employed as a Red Cap at the Trailways of New England Bus Terminal since the first week of September, 1957. Trailways of New England, Inc., filed a statement dated July 14, 1958, which appears on page 48 of the Record, and which reads:

'TO WHOM IT MAY CONCERN:

William Howard, Jr., will be made available to cover spare work on the New Haven Railroad at any time.

GLENN W. COVILL
Terminal Manager'

"At no time did the Carrier call the Claimant to work as a spare time Janitor when the Claimant was not available. * * *"

First, you will note the letter submitted by the Organization from the Claimant's last employer was written on July 14, 1958, over a year after the present claim was filed. The letter does not purport to say that Claimant "was previously available", only that he "will" be made available. Clearly then, this evidence would not support a contention that Claimant was reasonably available for a period of time prior to July 14, 1958.

Secondly, the statement that Carrier did not call Claimant to work "when the Claimant was not available" is pure sophistry. The Carrier did not call Claimant so how could any conclusion be drawn from something that never occurred. As a matter of fact, the Carrier was prohibited from calling Claimant because of the understanding referred to above.

We have an obligation in rendering decisions at this level to interpret the contract in the manner in which the parties had intended it to be construed, based upon the language used. Rule 47 has been interpreted by the parties to permit the use of an employe from several crafts or seniority districts to perform work in those separate districts or crafts as long as he was reasonably available to do so. The parties made a further distinction and set employes engaged in outside employment outside the purview of this interpretation. As applied to the facts herein, the decision should have held that Mr. Gary could properly be used to perform work in both crafts and Claimant could not be used to perform service for the Carrier and for an outside concern.

For the reasons stated above, we dissent.

/s/ W. F. Euker
W. F. Euker

/s/ R. E. Black
R. E. Black

/s/ R. A. DeRossett
R. A. DeRossett

/s/ G. L. Naylor
G. L. Naylor

/s/ O. B. Sayers
O. B. Sayers