

Answer # 11

11

SECTION 11 OF OREGON SHORTLINE III ARBITRATION COMMITTEE

PARTIES TO DISPUTE:

Award No. 1  
Case No. 1

United Transportation Union  
and  
Illinois Central Gulf Railroad

STATEMENT OF CLAIM:

Claim of Yardman W. J. Fulcher, Employee No. 627731, Louisville, Mississippi for \$318.31 make up pay for Adjustment Period No. 13 (July 12 through August 8, 1982) and for \$312.32 make up pay for Adjustment Period No. 3 (October 4 through October 31, 1982).

FINDINGS:


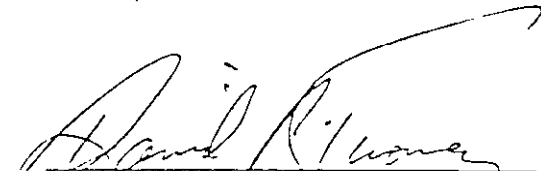
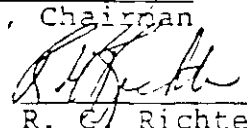
The Interstate Commerce Commission granted the Carrier authority to abandon a portion of the New Albany District between Woodland and Ackerman, Mississippi, imposing Oregon Short Line III Protective Conditions. As a result of this transaction, the Louisville to Houston Local was abolished on February 26, 1982. The Claimant, Yardman W. J. Fulcher, was working as a brakeman on this train at the time of abolishment. Mr. Fulcher was thus an employee who was the occupant of a position abolished as a result of a transaction. While he

immediately marked to a brakeman's position on the Louisville to West Point Local, a job in the same class of service as the one which was abolished the evidence shows that the compensation earned on this new job was less than the job abolished as a result of the transaction. Please see Employee's Exhibit D. We find that Mr. Fulcher was indeed a "Displaced Employee" within the plain meaning of the OSL III conditions because as a result of the transaction he was placed in a worse position with respect to his "compensation."

We shall sustain this claim.

#### Award

Claim sustained.

 <u>R. T. Wade, Employee Member</u>	 <u>David P. Twomey, Chairman</u>	 <u>R. G. Richter, Carrier Member</u>
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Dated: 4/11/85

SECTION 11, OREGON III ARBITRATION COMMITTEE

PARTIES TO DISPUTE:

Award No. 2

Case No. 2

United Transportation Union

and

Illinois Central Gulf Railroad

STATEMENT OF CLAIM:

Claim of D. H. Luke for displacement allowance as a result of abandonment of Pearl River District.

FINDINGS:

On December 10, 1979, the Interstate Commerce Commission approved the abandonment of a portion of the Carrier's Pearl River District from Wells to Walnut Grove, Mississippi. In approving the abandonment, the Commission imposed the Oregon Short Line Protective Conditions (Oregon III).

Prior to the abandonment, two through trains operated between Jackson, Mississippi and Louisville, Mississippi via Union, Mississippi. On April 3, 1980, the line was abandoned and the jobs operating via Union were changed to operate between Louisville, Mississippi and Jackson, Mississippi via Newton, Mississippi. An existing local performing service between Newton and Union would thereafter also operate

between Union and Walnut Grove, Mississippi. Finally, a switch engine operating out of Jackson, Mississippi would service Wells. The Claimant, Mr. D. H. Luke, was a regular flagman on the Louisville to Philadelphia local. Mr. J. D. Fleenar who was regularly assigned to one of the positions operating via Union rolled Mr. Luke after the above set forth change. Mr. Luke then exercised his seniority and compensation on his new position was equal to or greater than the compensation of the job he held prior to the abandonment.

Some two years after the abandonment, the Carrier rearranged certain trains off the Cleveland District to the Yazoo District. As a result, the local chairman of the UTU requested a reallocation of jobs assigned to through freight service, which is permissible under the ICG-GMO Merger Agreement with the UTU. As a result, Mr. Luke was displaced as follows:

1. Mr. B. K. Martin was displaced on March 19, 1982, as conductor on LUJ-JUL #1 by a District 5 employee. Mr. Martin then placed himself as pilot for the same District 5 employee. Pilot position being required, this was an open job for senior conductor under GM&O-Lines South Schedule.

2. Mr. B. K. Martin displaced Mr. D. H. Luke off conductor position Louisville-Union Turn Local on March 24, 1982, and Mr. Luke displaced onto the brakeman position on the same local assignment.

In order to qualify for OSL III benefits, an employee must be "placed in a worse position with respect to his compensation and rules governing his working conditions" as

a result of the "transaction" as specifically required by the definition in the Oregon Protection Conditions which states as follows:

(b) "Displaced employee" means an employee of the railroad who, as a result of a transaction, is placed in a worse position with respect to his compensation and rules governing his working conditions.

The Carrier's evidence is not contradicted that after the abandonment on April 3, 1980--the transaction in question--Mr. Luke obtained a position that was equal to or greater than the compensation of the job he held prior to the abandonment. Thus in April of 1980 he did not qualify as a "displaced employee" within the plain meaning of the above set forth language.<sup>1</sup>

The evidence of record shows that the adverse effect of the March 1982 displacement of Mr. Luke was the result of the implementation of a provision of the Merger Agreement. The fact that the Carrier paid claims Mr. Luke submitted after being displaced by Mr. Martin to March 10, 1983 cannot serve to make the instant claim valid under the facts of this case

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the involved

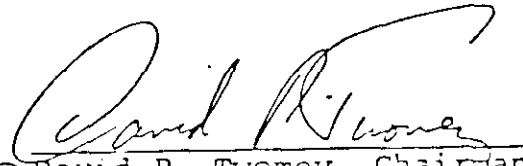
<sup>1</sup>It should be made very clear that not all employees in seniority districts at the time of the transaction were certified as having been adversely affected as a result of this transaction. The Organization proposed such language for the Implementing Agreement relating to the abandonment in question, which proposal was not accepted by Referee Kasher, leaving the OSL III language as controlling.

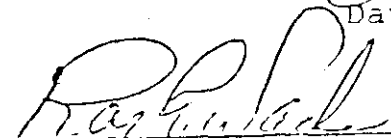
as applied to the language of the Oregon Short Line Protective Provisions.

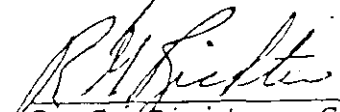
We must deny this claim.

Award

Claim denied.

  
David P. Twomey, Chairman

  
R. T. Wade, Employee Member

  
R. G. Richter, Carrier Member

Dated: 4/11/85

SECTION 11 OF OREGON SHORTLINE, III ARBITRATION COMMITTEE

PARTIES TO DISPUTE:

Award No. 3  
Case No. 3

United Transportation Union

and

Illinois Central Gulf Railroad

STATEMENT OF CLAIM:

Claim of Brakeman J. D. Morgan, Employee No. 37891, for Oregon III benefits covering Adjustment Period No. 5 (November 29 through December 26, 1982) and Adjustment Period No. 6 (December 27, 1982 through January 24, 1983).

FINDINGS:

As of February 14, 1982 the Interstate Commerce Commission granted the Carrier authority to abandon trackage from Bemis, Tennessee to Coffeeville, Mississippi, imposing Oregon Short Line Protective Conditions. The Kyle Railway Company purchased the above portion of the Carrier's railroad, but it was unable to begin service as of February 14, 1982. The ICG continued to operate the trackage in question until February 27, 1982, on which date the ICG ceased operations on that portion of the railroad. The ICG officially abandoned the trackage from Bemis to Coffeeville as of March 1, 1982.



The Claimant, Mr. J. D. Morgan, had been working a brakeman's position on the Water Valley to Holly Springs Local since September 1, 1981. The position was created by the absence of regular brakeman L. F. Olivis, who was off due to personal injury. Mr. Olivis returned to work from his injury leave of absence on February 25, 1982, and rolled Flagman C. N. Riley from the Water Valley to Holly Springs Local. Mr. Riley then rolled Mr. Morgan on February 26, 1982. When operations ceased on the trackage in question and when the Carrier officially abandoned the trackage, the train crew operating the train on the district consisted of Conductor A. K. Thomas, Brakeman C. N. Riley and Flagman L. F. Olivis. All three men were deemed adversely affected by the transaction and have been granted protection under Oregon Short Line Conditions.

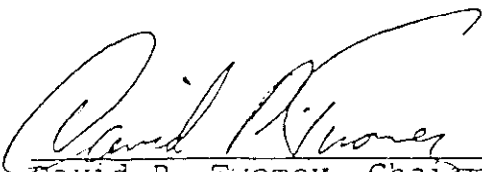
We are compelled to deny Mr. Morgan's claim. If Mr. Olivis had not returned to work from his injury leave and rolled Flagman Riley, which resulted in Mr. Riley rolling Mr. Morgan, Mr. Morgan would have been a "displaced employee" since he would have been placed in a worse position with respect to compensation as a result of the transaction--the ceasing of operations and abandonment of the trackage. Unfortunately for Mr. Morgan he was placed in a worse position with regards to compensation as a result of Mr. Olivis' return to work, not the transaction just referred to.

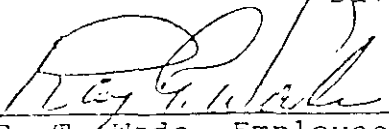
The contention by the Organization that a transaction took place on February 14, 1982, the date on which the ICG was authorized to abandon the trackage, cannot serve to provide benefits for Mr. Morgan under OSL III Conditions, for even if such was a transaction, the mere fact that a transaction occurs does not qualify an employee for OSL III benefits, if it is shown that the cause for his job displacement was a factor other than the transaction. In this case, as set forth above, Mr. Morgan's job displacement was caused by Mr. Olivis' return to work, and not a transaction.

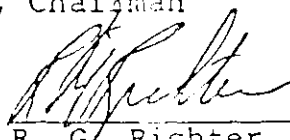
We are compelled to deny this claim.

Award

Claim denied.

  
David P. Twomey, Chairman

  
R. T. Wade, Employee Member

  
R. G. Richter, Carrier Member

Dated: 4/11/85

SECTION 11 OF OREGON SHORT LINE III ARBITRATION COMMITTEE

PARTIES TO DISPUTE:

Award No. 4  
Case No. 4

United Transportation Union  
and  
Illinois Central Gulf Railroad

STATEMENT OF CLAIM:

Claim of Oregon III protective benefits for D. W. Key, Employee No. 626708, for Adjustment Period No. 4 (November 1 through November 28, 1982) and Adjustment Period No. 5 (November 29 through December 26, 1982).

FINDINGS:

The Interstate Commerce Commission granted the Carrier authority to abandon a portion of the New Albany District between Bemis and Middleton, Tennessee, imposing Oregon Short Line III Protective Conditions. Effective March 15, 1982, the Carrier abandoned the line and abolished the Middleton-Bemis Local, causing the displacement of the five crew members, including the Claimant, Mr. D. W. Key. Mr. Key was working the flagman position on the abolished crew. However, he promptly exercised his seniority to a higher paying job on the Jackson to Okolona Local. Mr. Key continued to hold this

higher paying job until June 14, 1982 at which time he was displaced by a series of bumps which were unrelated to the March 15, 1982 transaction and were seniority moves permitted by the Schedule Agreement.

While Mr. Key was affected by the transaction in March of 1982, in order to qualify for OSL III protective benefits as a "Displaced employee" the affected employee must be placed in a worse position as to compensation and rules. The definition of a "Displaced employee" set forth in the OSL III Conditions is as follows:

(b) "Displaced employee" means an employee of the railroad who, as a result of a transaction, is placed in a worse position with respect to his compensation and rules governing his working conditions.

Mr. Key was able to obtain a higher paying position immediately following the transaction. And, since Mr. Key was able to obtain a position where his compensation was equal to or greater than his compensation prior to the transaction, he was not placed in a worse position with regards to his compensation and does not qualify as a "Displaced employee."

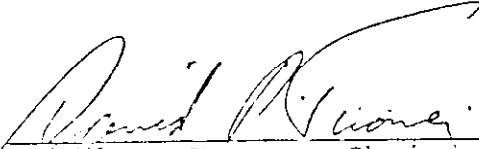
Mr. Key was displaced from the higher paying position on the Jackson to Okolona Local on June 14, 1982 when he was displaced by a series of bumps, which the evidence shows were unrelated to the March 15, 1982 transaction. The moves in question were seniority moves permitted by the schedule agreement and were not connected with the abandonment. As

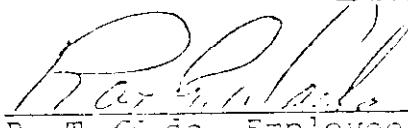
such Mr. Key did not become entitled to OSL III benefits on June 14, 1982, since the abandonment of the Bemis to Middleton trackage on March 15, 1982 was not the cause of his June 14, 1982 displacement.


We must deny this claim.

Award

Claim denied.

  
David P. Twomey, Chairman

  
R. T. Wade, Employee Member

  
R. G. Richter, Carrier Member

Dated: 4/11/85

SECTION 11 OF OREGON SHORT LINE III ARBITRATION COMMITTEE

PARTIES TO DISPUTE:

Award No. 5  
Case No. 5

United Transportation Union  
and  
Illinois Central Gulf Railroad

STATEMENT OF CLAIM:

Claim of Brakeman J. L. Marcom, Employee No. 37892, for Oregon III protective benefits covering Adjustment Periods 9, 10, 11, 12, 13, 1, 2 and 3 of 1982.

FINDINGS:

The Interstate Commerce Commission granted the Carrier authority to abandon a portion of the New Albany District between Bemis and Middleton, Tennessee, imposing Oregon Short Line III Protective Conditions. The abandonment occurred on March 15, 1982.

On March 14, 1982, the Claimant, Mr. J. L. Marcom, was working off the extra board filling a temporary vacancy position on the Jackson to Okolona Local created by the absence of regular brakeman J. S. Camp, who was off due to personal injury. He was rolled from this temporary job at 7:30 p.m. on March 14, 1982 by Mr. J. W. Ross, a move which

was unrelated to the abandonment. Twenty-five minutes later Mr. Ross was displaced by Flagman D. W. Key, who was working the New Albany to Middleton Local, which was abolished as a result of the transaction referred to above. On March 15, Mr. Marcom completed the return trip to Jackson on OJ2 and Mr. Key went out on J01 on March 16.

The Organization claims that Mr. Marcom was adversely affected by the abandonment of the trackage from Middleton to Bemis in March of 1982, and that he is entitled to OSL III benefits as a displaced employee because of the transaction.

The principal theory of the Organization as handled on the property and is now properly before this Board is that Mr. Marcom is entitled to OSL III benefits as a displaced employee because he worked the Jackson to Okolona Local, working to Okolona on March 14, 1982 and returning to Jackson on March 15, 1982, and that he was adversely affected by the chain of displacements originating with the abandonment of March 15, 1982.

We find that Mr. Marcom was not adversely affected by the chain of displacements as set forth in the facts above. Mr. Ross displaced Mr. Marcom in the exercise of his seniority as was his right in accordance with the schedule agreement, and this displacement was not related to the transaction in any manner. Mr. Ross was then displaced by Mr. Key, who had been displaced as a result of the

abandonment. Mr. Ross then if he was placed in a worse position by the transaction with regards to his compensation, would then qualify as a "Displaced employee" entitled to OSL III benefits. The record shows that in fact Mr. Ross was placed in a worse position with regards to his compensation and he is receiving OSL III benefits.

Mr. Marcom was a District 4 Jackson, Tennessee extra board employee prior to the March 15, 1982 transaction. After the transaction Mr. Marcom continued working the extra board. No evidence of record exists to show that Mr. Marcom was cut off the extra board because of the above set forth transaction. The Carrier asserts and offers supporting evidence that after the abandonment Mr. Marcom continued to work on the extra board and suffered no loss of earnings. The Carrier further asserts that any subsequent decline in Mr. Marcom's earnings are attributed to a decline in the Carrier's business and is totally unrelated to the Bemis to Middleton abandonment. While Mr. Marcom was later cut off the extra board and had to go to Fulton, Kentucky to work, based on the record before this Board we cannot find that Mr. Marcom was cut off the extra board at that time due to the March 15, 1982 abandonment. The parties did not develop such a theory of this case in the handling on the

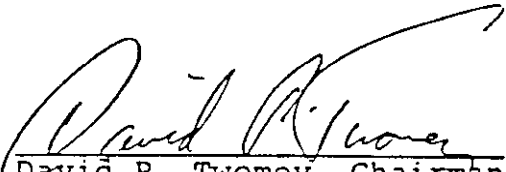


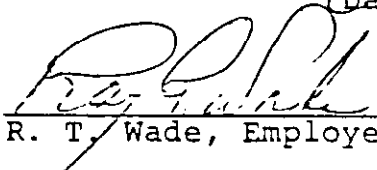
property. Therefore we make no finding on such a theory of this case.


We must deny this claim.

Award

Claim denied.

  
David P. Twomey, Chairman

  
R. T. Wade, Employee Member

  
R. G. Richter, Carrier Member

Dated: 4/11/85

SECTION 11, OREGON III ARBITRATION COMMITTEE

Award No. 6  
Case No. 6

PARTIES TO DISPUTE:

United Transportation Union

-and-

Illinois Central Gulf Railroad

STATEMENT OF CLAIM:

Claim of B. R. Barrett for displacement allowance as a result of abandonment of Pearl River District.

FINDINGS:

On December 10, 1979, the Interstate Commerce Commission approved the abandonment of a portion of the Carrier's Pearl River District from Wells to Walnut Grove, Mississippi. In approving the abandonment, the Commission imposed the Oregon Short Line Protective Conditions (Oregon III).

Mr. Ivey's letter of March 10, 1983 sets forth pertinent facts in the case as follows:

...Prior to abandonment of Pearl River District trackage on April 3, 1980, you occupied the regular Brakeman position with Conductor J. W. Peebles on Trains LUJ and JUL between Louisville and Jackson, Miss. On April 2, 1980 you went to Laurel when your position was abolished. In his notice of March 31, 1980, Trainmaster J. M. Jennings served notice of the abolishment of your position on arrival at Louisville, Miss., April 2, 1980.

In that same notice, Mr. Jennings advertised a six-day thru freight assignment, known as Job "A", to be established effective April 3, 1980, to operate between Louisville, Miss., and Jackson, Miss., via Newton and between Jackson, Miss., and Louisville via Newton. Mr. W. I. Burrage was Flagman on the assignment you occupied as Brakeman with Conductor Peebles prior to the abandonment. Mr. Burrage and Conductor Peebles bid on and were awarded the new assignment, which was very similar to your old assignment. You were senior to Mr. W. I. Burrage and could have gone to the Flagman position on the new assignment and held same thru April 13, 1980. On April 14, 1980, you took the open Brakeman job with Conductor Peebles. This was for all practical purposes your "old job" that you held prior to the abandonment.

You continued to hold that position until you were displaced later by a chain of displacements entirely unrelated to the abandonment of the Pearl River District trackage.

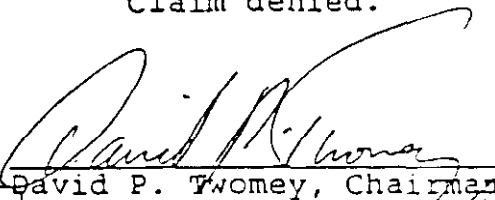
A review of your earnings prior to the abandonment and the earnings of the Flagman position you could have held and the Brakeman position you did hold on Trains JUL and LUJ following the abandonment, reveals the earnings were greater following the abandonment....

In March of 1982, nearly two years after the Pearl River abandonment of April 3, 1980, Mr. Barrett was displaced from his job on the Louisville to Jackson assignment by another trainman in the exercise of seniority as a result of a reallocation of jobs permissible under the ICG-GMO Merger Agreement between the UTU and the Carrier. Mr. Barrett began filing OSL III claims for a displacement allowance, which were paid for three periods. Mr. Barrett was then notified by the Carrier that he was not entitled to a displacement allowance, and that the payments were in error.

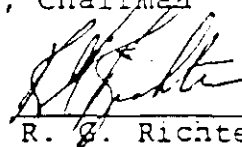
As set forth in Award No. 2 (Claim of Mr. D. H. Luke) in order to qualify for OSL III Protective Benefits as a "Displaced employee," an employee must be placed in a worse position with respect to compensation as a result of the "transaction" in question. The evidence indicates that after the abandonment of the Pearl River District trackage on April 3, 1980--the transaction--Mr. Barrett's compensation was greater than before the abandonment. As a result he does not qualify as a "Displaced employee" within the clear language of the Oregon III Conditions defining a "Displaced employee." The adverse effect of the March 1982 displacement of Mr. Barrett was the result of the implementation of a provision of the Merger Agreement, and was not the result of the April 3, 1980 transaction. The fact that the Carrier had paid three OSL III claims cannot serve to make the instant claim valid under the facts of this case as applied to the clear language of the OSL III Protective Provisions. We are compelled to deny this claim.

Award

Claim denied.

  
David P. Twomey, Chairman

  
R. T. Wade, Employee Member

  
R. G. Richter, Carrier Member

Dated: 4/11/85

SECTION 11 OF OREGON SHORT LINE III ARBITRATION COMMITTEE

PARTIES TO DISPUTE:

Award No. 7  
Case No. 7

United Transportation Union

-and-

Illinois Central Gulf Railroad

STATEMENT OF CLAIM:

Claim of Brakeman J. L. Carter, Employee No. 40411, for Oregon III protective benefits covering Adjustment Period No. 1 (August 8 through September 4, 1983); and Period No. 2 (September 5 through October 10, 1983).

FINDINGS:

The Interstate Commerce Commission granted the Carrier authority to abandon the Woodland to Ackerman, Mississippi line, imposing Oregon Short Line III Protective Conditions. The abandonment was effective March 1, 1982. The Claimant, Brakeman J. L. Carter, was furloughed from the extra board at Louisville, Mississippi on February 15, 1982, two weeks prior to the abandonment. Some 1½ years after the transaction Mr. Carter filed his first claim for guarantee make up pay under Oregon III provisions. The Organization contends that Mr. Carter was cut from the extra board to reduce the Carrier's

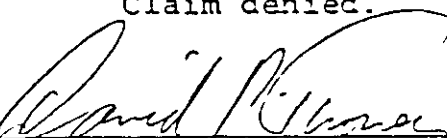
liability during the abandonment proceedings. The Carrier contends that Mr. Carter was cut from the extra board because of a decline in business.

The evidence shows that Mr. Carter worked a vacation vacancy from November 30 to December 20, 1981. From December 22, 1980 to February 5, 1982, when he was cut off the extra board, Mr. Carter worked a total of thirteen times. This evidence makes it clear that Mr. Carter was not working the required number of days to justify a position on the extra board as per Article 58(b) of the Trainmen's Schedule Agreement and the Note to Section 2(f) of the Merger Protective Agreement. Mr. Carter was properly cut from the extra board.

In order to qualify for benefits under the OSL III Conditions, it must be shown that the employee was displaced as a result of a chain of bumps originating with a transaction. Mr. Carter had been furloughed prior to the transaction in accordance with the agreement. We must therefore deny this claim.

Award

Claim denied.

  
David P. Twomey, Chairman

  
R. T. Wade, Employee Member

  
R. G. Richter, Carrier Member

Dated: 4/11/85

SECTION 11 OF OREGON SHORT LINE III ARBITRATION COMMITTEE

PARTIES TO DISPUTE:

Award No. 8  
Case No. 8

United Transportation Union

-and-

Illinois Central Gulf Railroad

STATEMENT OF CLAIM:

Claim of J. M. Neal, Employee No. 31940, for Oregon III protective benefits, covering Adjustment Period No. 6 (December 26, 1983 through January 22, 1984), in the amount of \$331.00.

FINDINGS:

The Interstate Commerce Commission granted the Carrier authority to abandon trackage between Taylorsville and Soso, Mississippi, imposing Oregon Short Line III Protective Conditions. Later, the Columbia and Silver Creek Railroad asked to acquire the line. The ICC in its Finance Docket No. 30382 approved the sale. On December 31, 1983, the sale was transacted. As a result of this transaction, the Taylorsville Road Switcher was abolished on December 31, 1983. The Carrier furloughed the Claimant, Mr. J. M. Neal, as of 12:01 A.M., December 31, 1983, from the Laurel extra board.

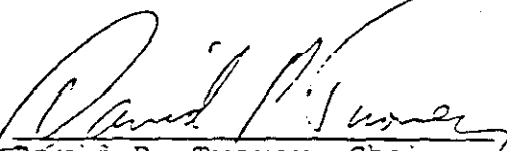
Trainman L. A. Clinton, who was occupying a position on the Taylorsville Road Switcher, which was abolished as a result of the transaction on December 31, 1983, marked to a position on the Laurel extra board on January 1, 1984.

We have considered the contentions and supporting evidence of the parties, and we find that Mr. Neal's furlough to take effect as of 12:01 A.M., December 31, 1983 was in anticipation of the transaction which took place on December 31, 1983, and was not the result of a decline in business. We find therefore that Mr. Neal was a displaced employee within the meaning of the OSL III Conditions, and we shall sustain the claim.

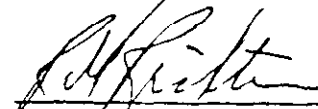
Award

Claim sustained.

Order: The Carrier is required to make the above Award effective within thirty days of this Award.

  
David P. Twomey, Chairman

  
R. T. Wade, Employee Member

  
R. G. Richter, Carrier Member

Dated: 4/11/85