

AWARD NO. 138
Case No. MW-11-SE

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES) Gulf, Mobile and Ohio Railroad Company
TO THE) and
DISPUTE) Brotherhood of Maintenance of Way Employees

QUESTION Is Section Laborer Joe Kamacho a pro-
AT ISSUE: tected employee and thereby entitled
to pay for loss of time incurred on
or after March 1, 1965.

OPINION Claimant holds seniority as a section laborer.
OF BOARD: He was furloughed September 15, 1964, and limited
his availability for work to his home section by
letter dated September 17. Thus he was not in active service
on October 1, 1964, pursuant to the Interpretations dated
November 24, 1965.

Page 1 of the Interpretations contains the fol-
lowing paragraph:

Employees who were on furlough on October 1,
1964 and were not then available for all
calls because of restrictions they had
voluntarily placed on their availability
are not to be considered in "active serv-
ice" on that date.

According to Carrier, there was opportunity for
Claimant to work as a laborer on other sections, which he declined
by his letter of September 17. The fact that he was working as
a crossing watchman on October 1, 1964, does not alter his status
as a furloughed employee. Award No. 51 holds that an employee's
working on October 1 does not thereby fulfill the requirement
for "active service." Since he was furloughed from the posi-
tion in which he held seniority, and he had placed restrictions
on his availability, the requirements of the February 7, 1965,
Agreement were not met by Claimant.

Disputed by employees

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A W A R D

The answer to the Question is No.


Milton Friedman, Neutral Member

Dated: Washington, D. C.
September 10, 1969

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Dissent of Labor Members

[Handwritten initials]
Again the question at issue is whether or not the employee was in active service on October 1, 1964.

The pertinent part of the Agreement applying in this case is found in Article I, Section I which reads in part as follows:

"All employees, other than seasonal employees, who were in active service as of October 1, 1964, *** and who had two years or more of employment relationship as of October 1, 1964, and had 15 or more days of compensated service during 1964, will be retained in service *** for the purpose of this Agreement, the term 'active service' is defined to include all employees working *** (whether or not October 1, 1964 was a working day) ***."

This employee was actually working on October 1, 1964 and met the two other qualifications necessary as defined in that section. Certainly, when an employee is actually working on a particular day, he is not on furlough that day and cannot be so considered.

The Referee relies in part on Award No. 51 for his decision. That Award is palpably wrong and we wrote a vigorous Dissent to it, for it certainly is not in accord with the language, the intent and the purpose of the February 7, 1965 Agreement.

The Referee in this case (MW IISE) has made a grievous error and we Dissent most vigorously.

[Signature: H. C. C. C. C.]
Labor Member

[Signature: J. E. Leighty]
Labor Member

October 14, 1969