PARTIES TO DISPUTE: Baltimore and Ohio Railroad Company

and

Brotherhood of Maintenance of Way Employees

STATEMENT OF CLAIM: Claim on behalf of Class A Machine Operator L. A. Wires, Ohio Division, for the difference in pay between what he received as a Trackman and what he should have received as a Class A Operator during his vacation period beginning May 29, 1972 through June 9, 1972.

OPINION OF BOARD: Claimant was assigned as a Class A Machine Operator on April 17, 1972 and worked that assignment until May 26, 1972 on which date he was furloughed from that position at the end of his tour of duty. May 27 and 28, 1972, was Saturday and Sunday and on May 29, 1972 Claimant began his vacation extending through Friday, June 9, 1972. Upon notification of furlough Claimant advised Carrier that, upon return from vacation, he would displace a junior Trackman. Much has been said, in the record, about whether Claimant "asserted" or "exercised" his rights to the lower rated position prior to taking his vacation. Carrier avers that Claimant exercised his rights and that, therefore, he was holding an assignment as Extra Gang Laborer during the entire period of his vacation. Petitioner, on the other hand, argues that Claimant merely asserted his displacement rights which he was obligated to do within ten (10) days from

date of furlough as provided in the Agreement, in order to protect his seniority. Under these circumstances, Petitioner has argued that the Claimant was working as a Machine Operator for more than 20 days immediately prior to beginning his vacation and was, therefore, entitled to vacation pay at the Operator daily rate.

There is no dispute that the Claimant was entitled to the two weeks of vacation involved herein.

We are persuaded that the position of the Carrier regarding the status of Claimant during his vacation period, i.e. Extra Gang Laborer, is at variance with numerous prior awards of the NRAB on this point, under similar circumstances, to wit, as follows:

AWARD NO. 19671 - Third Division, stated, in part:

> "We have held on many occasions that an employee, in order to acquire the rights of an occupant of a position, must commence work on such position ..... We have said in a series of consistant decisions that 'positions are not to be construed as assigned until such time as work is actually begun thereon'.
>
> In Award 12315 we said, '... the words ' having a regular assignment' means more than bidding in a position and having it assigned; there must be 'actual acceptance by physically taking over the duties....' "

We concur in the above recited principle.

Additionally, Awards No. 11301 and 11302 stated, in part, as follows:

> "Claimant was a regular assigned foreman. Immediately prior to taking his vacation he was displaced. The Carrier contends that he automatically reverted to the status of a regular assigned laborer. There is

insufficient evidence to sustain the Carrier's position. Claimant is entitled to vacation pay under 7 (e) of the Agreement."

Based upon a thorough review of the record before us, and under the circumstances in this particular case, it is our opinion that the Agreement was violated.

AWARD: Claim Sustained.

ORDER: The Carrier shall comply with this Award within thirty (30) days of the date of this Award.

C. Robert Roadley, Neutral Member

A. J. Cunningham, Employee Member

L. W. Burks, Carrier Member

Baltimore, Maryland
March 11, 1974