ORG. FILE 20-80
CARRIER FILE 140-513-3
NRAB FILE CL-7589

AWARD NO. 3
CASE NO. 3

SPECIAL BOARD OF ADJUSTMENT NO. 174

PARTIES The Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes

TO

DISPUTE The Gulf, Colorado and Santa Fe Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(a) Carrier violated the current Clerks' Agreement when it denied payment of travel and waiting time and living expenses to A. G. Maedgen for May 22, 23, 24, 29, 30 and 31, 1954; and,

(b) A. G. Maedgen shall now be paid in addition to any allowance of time previously made, two (2) hours at Helper rate of pay for each day May 22 and 29, 1954, and two hours fifteen minutes (2'15") for each day, May 24 and 31, 1954, at Helper rate of pay; and,

(c) A. G. Maedgen shall now be reimbursed for living expenses as indicated below:

Date	Breakfast at Granbury	Lunch at Granbury	Dinner at Granbury	Total
May 22			$ .85	$ .85
May 23	$ .45	$ .85	.85	2.15
May 29			.85	.85
May 30	.75	.45	.85	2.05
	$ 1.20	$ 1.30	$ 3.40	$ 5.90

(d) A. G. Maedgen shall now be paid seven (.07¢) per mile for 266 miles for each of two trips made from headquarters point to Granbury and return on May 22-24, 1954 and May 29-31, 1954 (Total $37.24), for use of his private automobile as means of getting to relief point for work and returning to headquarters point.

FINDINGS: Special Board of Adjustment No. 174, upon the whole record and all the evidence, finds and holds:

The Carrier and Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act as amended.

This Special Board of Adjustment has jurisdiction over this dispute.

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For the reasons stated in S.B.A. No. 174 Award 2 this claim must be sustained.

A W A R D

Claim sustained in accordance with the findings and opinion in S.B.A. No. 174 Award 2.

/s/ Hubert Wyckoff
Chairman

I dissent:

/s/ A. D. Stafford
Carrier Member

/s/ J. D. Bearden
Employe Member

Dated at Chicago, Illinois December 16, 1958

(For Carrier's Dissenting Opinion, see Award No. 2)

DISSENTING OPINION OF CARRIER MEMBER TO AWARDS NOS. 2 AND 3

OF

SPECIAL BOARD OF ADJUSTMENT NO. 174

The majority has, in these Awards Nos. 2 and 3, based their decisions on Third Division Award No. 5488 (Referee Donaldson) and statements that "The policy of this Special Board is to act upon the Agreement as interpreted by Third Division awards on this property, whether we agree with the awards or not, provided they are not palpably erroneous. We are unable to conclude that Award 5488 is palpably erroneous."

Had the majority in these Awards Nos. 2 and 3 decided the dispute on the basis of Article IX, Section 1 of the governing agreement and the conduct of the parties thereunder as set forth in the Carrier's Exhibit "A", instead of adopting the obviously erroneous interpretation of that rule by Third Division Award No. 5488, in disregard of the warning contained in the Dissent of the Carrier Members in that award, they would have found that the majority in Award No. 5488 had, while professing to construe or interpret, actually amended or revised Article IX, Section 1 of the governing agreement. In electing to accept Award No. 5488 without question, the majority in these Awards Nos. 2 and 3 have, the same as did the majority in Award No. 5488, disregarded the following facts:

(1) The terms of Article IX, Section 1, are limited by the very language thereof to employes who have a "headquarters" and a "regular assignment" which they are required to leave to perform service elsewhere and "necessitates their traveling".

(2) Individuals, such as the claimants in Third Division Award No. 5488 and these Awards Nos. 2 and 3, who are (a) furloughed employes with only an employment relationship, (b) not in the active service of the Carrier and (c) free to reside at any location of their choice and do as they please while in a furloughed status, cannot possibly have a "headquarters" and "regular assignment" which they were required to leave within the meaning of Article IX, Section 1.

(3) Contrary to the conclusion expressed in the ninth paragraph of the "Opinion of Board" in Award No. 5488 with regard to "compulsion", the "forfeiture of seniority" provision contained in Article III, Section 13-b of the governing agreement, is only applicable in instances where a furloughed employe fails to respond to a notice of recall to service within the 14 calendar days prescribed in the rule; which serves to prove that the claimant in Third Division Award No. 5488, as well as the claimants in these Awards Nos. 2 and 3, were under no compulsion to report for service but simply did so of their own volition and a desire to obtain employment that was available to them under the agreement rules by reason of their employment relationship. Moreover, any compulsion to which furloughed employes might be subjected by reason of the "forfeiture of seniority" provision of Article III, Section 13-b, is a requirement of the rule and not a requirement of the Carrier.

(4) Also contrary to the erroneous conclusion expressed in the eleventh paragraph of the "Opinion of Board" in Third Division Award No. 5488, the "regular work period", as referred to in the second sentence of Article IX, Section 1 of the governing agreement, can only refer to the "regular work period" of the "regular assignment" which an employe is required to leave to perform work elsewhere and which necessitates his traveling, and cannot possibly refer to "the hours of the position assumed" and to which a furloughed employe is traveling, as erroneously assumed by the majority in Award No. 5488.

In adopting the erroneous assumption of the majority in Award No. 5488 that "***the headquarters of a furloughed employe were at the division point." the majority in these Awards Nos. 2 and 3 failed, as did the majority in Award No. 5488, to distinguish between furloughed employes or regular assigned employes and explain why all of the furloughed employes who reside at widely scattered locations on a division comprising many miles of railroad should have a common headquarters at the "division point" where few if any reside, while the headquarters of regular assigned employes are at the city, town or station at which assigned to work. The inconsistency of the erroneous assumption of the majority in Third Division Award No. 5488 and in these Awards Nos. 2 and 3 that "***the headquarters of a furloughed employe were at the division point." is further emphasized by the fact that if the claimant in Award No. 2 had, for example, been used to protect either (1) a temporary vacancy of less than 15 calendar days' duration under Article III, Section 10-a, or (2) rest day relief service under Article VI, Section 10-h of the governing agreement, at Coleman, Texas where he resided, he would, on the basis of the majority's erroneous reasoning in Third Division Award No. 5488 and these Awards Nos. 2 and 3, be entitled to "***'necessary traveling expenses' based on the proposition that Temple was claimant's headquarters", notwithstanding the fact that the individual in the example cited had not been required to leave his point of residence.

Since there is nothing whatever contained in the agreement rules which prescribes the "headquarters" of furloughed or off-in-force-reduction employes and the Third and other Divisions of the National Railroad Adjustment Board have repeatedly recognized that it is without authority to add to, take from or otherwise write rules for the parties to a dispute (Third Division Awards Nos. 6107, 6271, 6365 and others), there can be no question but what the majority in Third Division Award No. 5488 and in these Awards Nos. 2 and 3 exceeded their statutory authority when they held that "the headquarters of a furloughed employe were at the division point". Moreover, if it had been the intention of the parties to the instant dispute that furloughed employes were to have a "headquarters" within the meaning and intent of the term as used in Article IX, Section 1, they would have so stated and provided for the designation of a headquarters point for such employes by management, the same as they did in Article IX, Section 3-b of the governing agreement, which reads in part as follows:

> "The Carrier shall designate a headquarters point for each rest day relief assignment,***"

It has, moreover, been historically recognized that the prerogatives and rights of management remain unchanged except to the extent restricted by agreement rules. See Third Division Awards Nos. 5897, 6001, 6270, 7113 and others.

In accepting Award No. 5488 without question as a proper interpretation of Article IX, Section 1, and which was unquestionably based on false assumptions, the majority in these Awards Nos. 2 and 3 failed to do that which even Referee Donaldson, the author of Award No. 5488, subsequently did in Award No. 6698 wherein he (1) reaffirmed the reasoning of Referee Carter in Award No. 4516 that "***an award cited as a precedent is no better than the reasoning contained within it***" and (2) overruled a prior Award No. 3589 on the same property which he found had been based on a false assumption.

The majority in these Awards Nos. 2 and 3 also failed to give heed to the undisputed fact that Award No. 5488 was not one of a long line of decisions but was, on the contrary, the <u>only award of record</u> which had held that a standard or uniform travel time rule, such as Article IX, Section 1 of the governing agreement, was applicable to furloughed employes.

Awards Nos. 2 and 3 are clearly erroneous and founded on false assumptions. The undersigned Carrier Member of this Special Board of Adjustment No. 174 dissents for the reasons stated herein.

/s/ A. D. Stafford
Carrier Member