

SPECIAL BOARD OF ADJUSTMENT NO. 287

[illegible]

AWARD IN DOCKET NO. 25

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

(1) Carrier violated the effective agreement by failing to compensate H. L. Cowgar, Monongah Division, at the Section Foreman's rate of pay while he was on vacation during the ten-day period from July 14 to July 25, 1958, inclusive.

(2) Carrier shall now compensate Claimant H. L. Cowgar for the difference in vacation pay received at the Trackman's rate and what he should have received at the Section Foreman's rate for the period referred to in Part (1) of this claim."

FINDINGS: This claim involves the Morse Interpretation of Article 7 of the December 17, 1941 Non-Operating Vacation Agreement as to an employee having a regular assignment, but temporarily working on another position at the time his vacation begins.

The facts here show Claimant worked as Track Foreman in vacation relief on Section 100-A from June 2 to 20, 1958; and as Track Foreman in vacation relief on Section 99-A from June 23 to July 11, inclusive. Claimant started his own vacation July 14, 1958.

Third Division Awards 5390 and 7772 have held, under the same type of facts cited above that "during the immediate period in question at least 20 consecutive days were worked at two positions classified as Section Foreman carrying identical monthly rates but at different locations." Both Awards were sustaining Awards.

The question which must be determined here is: Did Claimant's service as a trackman, when called out in emergencies on his rest days while serving as a Relief Foreman, break the continuity of such Foreman service within the meaning and intent of the Morse interpretation?

This point was not at issue in Awards 5390 or 7772.

We think that such Foreman Relief Service was not broken, within the meaning and intent of the Morse Interpretation for two reasons:

1. For the six weeks Claimant served as Relief Foreman, he was responsible to the Carrier for the sections to which assigned.

2. The service as a trackman was in emergencies, and occurred on Claimant's rest days. It did not occur on any of the regular workdays of, nor did it interfere with the requirements of, his foreman's assignments.

On the record here, a sustaining Award is indicated -- especially in the light of Morse's comments, upon which Awards 5390 and 7772 were predicated:

"x x x this award is not based upon any strict or literal interpretation of any section of the agreement when in the opinion of the referee such an interpretation would have done violence to the purpose of the agreement or would have produced an unfair, inequitable and unreasonable result."

AWARD

Claim sustained.

(s) Edward A. Lynch

Edward A. Lynch
Chairman

(s) A. J. Cunningham

A. J. Cunningham
Employee Member

(s) T. S. Woods

T. S. Woods
Carrier Member

Dated at Baltimore, Maryland,
this 28th day of March, 1960.