

Award No. 16  
Case No. HERE-1-E

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES ) Hotel and Restaurant Employees and Bartenders  
TO ) International Union  
DISPUTE:) and  
The New York Central Railroad Company

QUESTION The question at issue is whether an extra employee,  
AT ISSUE: protected under Article I, Section 1 of the February 7,  
1965 Agreement, can lose his protection because of ab-  
sence from Carrier's service in that he was not avail-  
able for an extra assignment, or extra assignments.

OPINION Article II, Section 1 of the Mediation Agreement provides,  
OF BOARD: in pertinent part, that "an employee shall cease to be a  
protected employee in case of his ... failure to accept  
employment as provided in this Article". Section 3 of said Article  
declares that when a protected employee is entitled to compensation under  
the Mediation Agreement (as was each of the employees here involved) "he  
may be used in accordance with existing seniority rules for ... temporary  
assignments which do not require the crossing of craft lines." Article I,  
Section 1 defines protected extra employees, in part, as those who are  
expected to respond when called.

Pursuant to the provisions of Article VII, Section 3 of  
the Mediation Agreement, this Board must confine its decisions to those  
specific questions submitted to it. The specific question here presented  
is couched in general terms. Thus the Board's answer to the question  
posed must, of necessity, also be given in general terms.

We find, therefore, that where the facts of a particular  
case establish that an extra protected employee has engaged in a con-  
sistent pattern of conduct of refusing to accept calls to perform extra  
work without proper cause, such employee may lose his protected status  
under the Mediation Agreement by reason of the application of Section 1  
of Article II. This for the reason that we consider an extra employee to  
be "An employee" as that term is used within the context of the aforesaid  
Section 1.

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AWARD

Under the conditions stated in the Opinion, an extra employee can lose the protection afforded by Article I, Section 1 of the February 7, 1965 Mediation Agreement.

REFEREES:

Lloyd H. Bailer  
William H. Churn  
David Solnick

Washington, D. C. - December 19, 1967