AWARD NO. 99
Case No. MW-12-W

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES TO THE DISPUTE ) Chicago, Rock Island and Pacific Railroad Company and Brotherhood of Maintenance of Way Employes

QUESTION AT ISSUE: Is each claimant (identified in Attachment "A" to our notice to Messrs. Wolfe and Leighty and identified within the "Employes' Statement of Facts" of the Employes' ex parte submission) entitled to be paid for all time he has not been permitted to work on or after March 1, 1965, and to be made whole for paid vacations, holiday pay, health and welfare, and any and all other similar benefits, because of the failure of the Carrier to return him to and/or retain him in compensated service at his guaranteed compensation as required by Article I, Protected Employes, and Article IV, Compensation Due Protected Employes, of the Mediation Agreement of February 7, 1965, and the Interpretations thereto dated November 24, 1965?

OPINION OF BOARD: In the statement of Carrier's position, it is noted that "this issue involves the Employes' propriety and timeliness in the handling of the individual claims making up this dispute." The procedure pursued by the Employes originated in a letter from Carrier dated April 20, 1965, which states, in part:

> We do not agree with you that the time limit rule is not applicable to claims filed under this Agreement--in fact, we feel it most certainly is. However, we do agree with you that until such time as we get strung out in some measure and in conference agree to some procedure in these instances that the time limit provisions should not be invoked. Therefore, until such time as a procedure is established

between us we will consider claims filed directly with this office as being validly filed.

Despite the foregoing, on July 21, 1965, the Employes were advised by Carrier to file claims in accordance with the Rules Agreement of August, 1954. However, they were filed with the Vice President-Labor Relations in accordance with the April 20 letter. The Employes stated that the understanding in the letter precluded a subsequent unilateral determination by Carrier. After the Interpretations of November 24, 1965, had been issued, the claims were once again filed with the Vice President-Labor Relations. They were again disallowed.

Contractual procedures for handling claims have been enforced consistently in this industry. But in this case the parties specifically waived regular procedures, as evidenced by Carrier's letter, which treated "claims filed directly with this office as being validly filed." That was to be done "until such time as a procedure is established between us."

Having thus agreed upon a method for handling claims, and having agreed that it would prevail until some mutually acceptable alternative was reached, Carrier was unjustified in issuing instructions to the contrary and then declining the claims when the Employes refused to accede to the unilateral instructions. The claims were filed in accordance with an understanding that required mutuality in order to change it. Therefore, the issue is properly before the Committee on its merits.

All but one of the 44 claims filed by the Employes concern men alleged to have been in active service on October 1, 1964, and who qualified as protected employees, but were subsequently furloughed. Either they were not returned to active service by March 1, 1965, or they were furloughed thereafter. One employee, Robert G. Jenkins, had been furloughed in September, 1964, but he averaged at least seven-days' work for each month furloughed during 1964, according to the Employes. Thus, as described by the Employes, Mr. Jenkins was a protected employee and pursuant to Article I, Section 1, was required to be "retained in compensated service" on and after March 1, 1965.

Carrier offered no proof to support its allegations that some of the employees were seasonal and that others "failed to obtain and retain employment pursuant to their rights" after February 7, 1965. Unsubstantiated assertions cannot prevail.

Neither the Agreement nor the Interpretations envisage a "seven-day test" for employees in active service on October 1, 1964, as was urged by Carrier. Award 14 faithfully applies the Agreement in holding that an employee who is subsequently furloughed is in no "different category than any other employee in active service who worked continuously after October 1, 1964." Claimants were therefore entitled to be returned to active service before March 1, 1965, and to be retained thereafter in compensated service.

A W A R D

The answer to the Question is "Yes", and the claimants are entitled to those benefits provided for in the Agreement of February 7, 1965, and its interpretations, without prejudice to any benefits provided by other agreements pertaining to paid vacations, holiday pay, health and welfare and any and all other similar benefits which do not fall within the jurisdiction of this Committee.

award 16844

Milton Friedman
Neutral Member

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