

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES) Chicago, Milwaukee, St. Paul & Pacific Railroad Company
TO THE) and
DISPUTE) Brotherhood of Maintenance of Way Employees

QUESTIONS (1) Did the Carrier violate the Mediation
AT ISSUE: Agreement dated February 7, 1965, Article
I, Section 1, when it failed to return
Machine Operator Eugene W. Murphy to his
position as a Machine Operator on the
Rocky Mountain Division on March 1, 1965
and
(2) Should Machine Operator Eugene W.
Murphy now be compensated at his applicable
rate of pay for each work day lost from
March 1, 1965 to March 28, 1965.

OPINION Claimant qualified as a protected employee
OF BOARD: and was furloughed in a force reduction on Janu-
ary 8, 1965. He was not returned to active service
before March 1, 1965. When he was furloughed, he filed his
name and address to retain his seniority. Under Rule 9(c),
he could have exercised his seniority to obtain a position
within 30 days. The 30-day period expired on February 7, 1965,
the date of the Agreement.

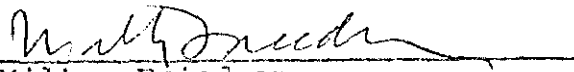
Article II, Section 1, provides that "an
employee shall cease to be a protected employee in case of
his...failure to retain or obtain a position available to him
in the exercise of his seniority rights." On February 7
Claimant was a protected employee and this section was appli-
cable to him as of that date. Not having obtained a position
through the exercise of seniority on February 7, which fell
within the 30-day period when he could have done so, he thereby
lost his protected status.

Article II, Section 1, does not have retroactive
effect (Award No. 63), but it must be applied on February 7,
1965, since that is the date on which the Agreement became
operative. This Committee lacks authority to amend the Agree-
ment by deferring the application of a provision beyond the
date upon which it became operative.

AWARD No. 103
Case No. MW-13-W

A W A R D

The answer to Questions 1 and 2 is
"No."


Milton Friedman
Neutral Member

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