AWARD NO. 270
Case No. TCU-38-E

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES) Penn Central Company
TO THE) and
DISPUTE) Transportation-Communication Employees Union

QUESTIONS
AT ISSUE: Is Carrier in violation of the Agreement, particularly Article IV, when it advises a displaced protected employee, that in order to retain his protected employee status, he must place himself on the highest rated position available to him in the exercise of his seniority, even though the transfer to such position requires a change in residence, and another position producing a lower rate was available to him not requiring a change in residence?

In this circumstance, in the event Carrier also advises the employee involved that his moving expenses will be paid by Carrier, is Carrier in violation of the Agreement (Article II, Section 1), when it later refuses to allow such moving expenses?

OPINION
OF BOARD: Despite the way in which the question is formulated, no issue of protected status is involved. The dispute concerns an employee's retention of his guaranteed compensation.

Claimant's position at Nanticoke, Pennsylvania, which paid $595.61 per month, was abolished effective June 30, 1966. There were a half-dozen positions to which he could have exercised his seniority. One of them, at Honey Pot Scales, Pennsylvania, was 23 miles from his residence at Berwick, Pennsylvania, and paid

$532.02. The lowest-paying position was Center Hall-Lemont, Pennsylvania, about 90 miles away, paying $521.25. The highest-paying position was Shamokin Weigh Scales, Pennsylvania, 39 miles away. It paid $620.03.

On June 30, 1966, Claimant spoke with the Supervisory Agent of his territory and with the office manager of the Supervisor Station-Agent at Buffalo, New York. He told them that he intended to displace at Center Hall-Lemont. In both cases the responses apparently were that he would not preserve his guaranteed rate thereby, and he was advised to bid the higher-paying Shamokin position. Claimant did so, and now seeks moving expenses. He alleges that both supervisors assured him he would receive moving expenses if he took the Shamokin job.

The February 7, 1965, Agreement does not require an employee to move where a position not requiring a change in residence is available to him in the exercise of his seniority. Claimant could have bumped into the Honey Pot job and he would have been protected at his guaranteed rate of $595.61.

Two bases are advanced for the claim. One is that Carrier's supervisors promised Claimant he would be paid his moving expenses if he took the Shamokin position. The other is that once the supervisors undertook to advise Claimant they were obliged to advise him that he could take the Honey Pot job without loss of his guarantee.

There is a dearth of evidence that Claimant received any assurance of moving expenses. He says he did. Both supervisors say he did not. That is where the matter rests. If some extra-contractual benefit is to be granted, there must be proof that the employee acted on the assurances given him and none is in the record. Claimant has the burden and has not met it. Since Carrier does not have the burden of disproving the allegation, it must be held that evidence of such a promise has not been adduced.

Has Carrier created an obligation by its supervisors' advice to Claimant? Nothing in the record suggests that Honey Pot was mentioned at all--or that Claimant did not know that his rate would be protected if he displaced there. It is apparent

that Claimant had already selected Center Hall-Lemont, the lowest paying of all six positions with listed rates, as the one which he intended to occupy.

The only position available where Claimant could maintain his guaranteed rate (aside from Honey Pot) was Shamokin. Carrier, when informed of Claimant's choice of Center Hall-Lemont on June 30, advised him that he should exercise his seniority to obtain the Shamokin position if he were to retain his guarantee. The response dealt with the question as Claimant posed it, and Carrier had no reason to know that Claimant was unaware of his rights in connection with Honey Pot.

If Claimant had no intention or desire to move, he himself could have raised the Honey Pot alternative, assuming that he had any doubt about it. The Organization's submission notes that although "Carrier contends that Claimant apparently had no intention of placing himself at Honey Pot, the file is devoid of any evidence to that effect." However, it is also devoid of any evidence or even assertion that Claimant lacked knowledge of his rights with respect to Honey Pot.

As it turned out, Carrier gave Claimant some very sound advice at that last moment when the Center Hall-Lemont question was raised. The Organization comments that Carrier would have been subjected to a substantial monthly liability if Claimant went to Honey Pot. But had the supervisors simply accepted Claimant at his word and silently permitted him to displace at Center Hall-Lemont, his compensation would have been reduced by $74.00 per month, instead of having been increased by $25.00 at Shamokin. Carrier having correctly advised Claimant within the framework of the issue which was posed, cannot be faulted for not explaining all conceivable contingencies or for not answering questions which were not raised.

A W A R D

The Questions as presented assume facts not in evidence. The answer to the Question whether moving expenses are due Claimant is No.

Milton Friedman
Neutral Member

Dated:
Washington, D. C.
November 16, 1971