AWARD NO. 306
Case No. TC-BRAC-46-E

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES ) Canadian Pacific Railway Company
TO THE ) and
DISPUTE ) TC Division - BRAC

QUESTIONS AT ISSUE: The following questions are framed by the Disputes Committee, based upon the Joint Statement submitted by the parties:

1. Are R. Beauregard and/or J. Lapointe protected employees under the February 7, 1965 Agreement?

2. If so, is R. Beauregard entitled to moving expenses and preservation of compensation, as claimed, and is J. Lapointe entitled to preservation of compensation, as claimed?

OPINION OF BOARD: Claimants hold seniority in a district which extends from Canada into the United States. The employees in this district may exercise their seniority to positions on both sides of the border.

Neither Claimant was working in the United States on October 1, 1964. Mr. Beauregard had been appointed to a position in the United States on September 29, 1964, but did not occupy it until December 23, due to delays in obtaining a visa. Mr. Lapointe also was appointed to a position in the United States in February, 1964. He did not man it then, because he was working as a regular Relief Agent at the time. He did work in the United States in 1964, during the months of January, February and December.

In November, 1965, both Claimants were working in Newport, Vermont. As the result of a change made by Carrier,

they lost their positions and exercised seniority to displace operators in Canada. Claimant Beauregard seeks moving expenses and both seek preservation of compensation under the February 7 Agreement.

Disposition of these issues requires determining whether Claimants are protected employees. The basic questions are whether and to what extent Carrier's employees are covered by the February 7 Agreement, of which Carrier is a signatory. Obviously those who, for example, were in active service in the United States on October 1, 1964, and otherwise qualified under Article I based on service within this country, became protected employees. But is every employee in this overlapping seniority district automatically covered by the Agreement?

Separate rules agreements are applicable to the work performed in each country. There is no indication that these parties expected employees, who had never worked in the United States, to be covered by the February 7 Agreement, any more than they are covered by provisions in the United States schedule agreement. If that is so, those only briefly assigned to the United States prior to October, 1964, should not come under the February 7 Agreement by virtue of Canadian employment.

Thus protected status is dependent upon periods of employment in the United States portion of the seniority distract, which is subject to the schedule agreement. To acquire protection, an employee must have been in active service <u>in this country</u> on October 1, 1964, or have been restored to active service by February 7, 1965, must have had two years of employment relationship <u>here</u> as of October 1, 1964, and must have had fifteen days of compensated service <u>here</u> in 1964.

To hold otherwise would grant the benefits of the Agreement to every employee in the seniority district, including those who may never have worked in the United States and who may never have been covered by the schedule agreement which is applicable on this side of the border. Special considerations may arise in applying the February 7 Agreement to employees

moving back and forth across the border. But these are not germane where basic qualifying conditions under the February 7 Agreement have not been met.

Aside from other qualifying conditions, neither Claimant had the required employment relationship in the United States. Their total work in this country prior to October, 1964, was only a few months, although they have been employed by Carrier for many years. Thus they are not protected employees.

The Agreement's application in situations like this apparently has not been an issue before. Consequently the Award in this case is deemed limited to this Carrier, solely on its particular facts. It is not designed to have general applicability to Canadian Carriers who may have used some different, mutually acceptable method of applying the Agreement. Neither does it prohibit these parties from negotiating an Agreement on this issue which will dispose of it on a different basis.

AWARD

The Answer to Question No. 1 is No.

Milton Friedman
Neutral Member

Dated: July 26, 1972
Washington, D. C.