AWARD NO. 321
Case No. CL-90-W (TC)

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES TO THE DISPUTE) Chicago and Illinois Midland Railway Company
and
Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes

QUESTIONS AT ISSUE:

1. Did the Carrier violate the February 7, 1965 Stabilization of Employment Agreement when it refused to pay T. J. Rodden his guaranteed compensation for the months of October, November and December, 1970, January, March, April and July, 1971?

2. Shall Carrier be required to compensate T. J. Rodden in the amount of:

October, 1970	-	$ 11.59
November, 1970	-	162.76
December, 1970	-	329.21
January, 1971	-	343.64
March, 1971	-	161.29
April, 1971	-	94.52
July, 1971	-	139.01

plus all wage increases, plus 1% interest per month commencing sixty (60) days from date of claims?

OPINION OF BOARD: A request for interest specified in Question No. 2 has been withdrawn, and the Question is deemed modified accordingly.

Claimant was denied protected compensation on the ground that a decline in business, as described in Article I, Section 3, of the February 7 Agreement, justified a reduction in force. Two facets of the issue must be resolved. One is the Organization's contention that appropriate notice under Section 3 was never given. The other is the Organization's

denial that Carrier actually instituted a reduction in force, even if it had the right to effectuate one under Article I, Section 3.

An appropriate decline in business does not automatically produce a reduction in force. It simply justifies that step if Carrier takes it in accordance with the Agreement's requirements. One requirement is for notice. Section 3 specifies:

> Advance notice of any such force reduction shall be given as required by the current Schedule Agreements of the organizations signatory hereto.

Article XXI of the schedule agreement provides that there shall be at least five-days' notice "before the abolishment of a position or reduction in force." According to Carrier, since the same notice is required for both situations, once it is given for one it is applicable to the other. Claimant did not receive notice that he was being denied protection as a result of the operation of Article I, Section 3. Rather, he was displaced in January, 1970, as part of a chain of displacements produced by the abolishment of a position, and he wound up on the extra list.

The notice provision in Article I, Section 3, is specific and direct. It does not anticipate that an employee will be advised that his position is to be abolished, but that he will be notified of a force reduction of protected employees under that Section. An employee is not expected to assume or infer that he is being denied protected compensation thereafter. He must be told at least five days in advance that his benefits are suspended by virtue of the relevant provision. However, Claimant was not so advised in January, 1970, when he was displaced, nor in the following November, which was the month of his first claim for protected compensation.

Actually Claimant worked with considerable regularity from January, 1970 on. He was not involved in a force reduction, although he went to the extra list, working from

there instead of on a regular position. Thus there appears to be merit in the Organization's stance, as stated in part in its letter to Carrier dated November 3, 1971:

> ...The above employes remained in Active Service as part of the Work force of Protected Employees and performed service for the Carrier. A Carrier cannot continue to work all protected employes and withhold their guarantee.

What Carrier has sought to do is "reduce forces," because of a decline in business, simply by denying protected benefits to employees who remain at work. The February 7 Agreement, however, does not say that a number of employees may be denied their benefits in proportion to a decline in business. Instead, it empowers Carrier to reduce the force of protected employees and to deny them benefits meanwhile. Carrier may reduce forces either from among those holding regular positions or those on the extra list, but it cannot retain employees in either group at work, and yet deny them protected benefits in months in which they fail to earn their guarantees.

A reduction in force is not some abstract bookkeeping device, but a concrete diminution in the working force because fewer employees are needed. A reduction in force does not occur because on some particular day an employee on the extra list received no assignment. Removal either from regular positions or from the extra list because there is no need for the services of the employees is what constitutes a reduction in force.

Article I, Section 3, cannot be used to make part-time workers of protected employees, thereby denying them their benefits. For, aside from other considerations, that provision requires five days advance notification whenever a force reduction is effectuated: "Advance notice of any such force reduction shall be given as required by the current Schedule Agreements..." (Underlining added.)

Carrier can employ the decline-in-business formula to reduce forces only after the advance notice is given, whether the force reduction is made once a week, once a month or once a year. Notice given at one time does not last forever. If employees are brought back to work and they subsequently again undergo force reduction, they must receive notice again.

Protection cannot be removed from an employee who continues to be employed. It is due him until he is actually let go under Article I, Section 3. That never occurred in Claimant's case. He worked every month from the date of his displacement and, from all indications based upon his monthly earnings, at close to full time for most of the period.

Further, abolishment of positions is not covered by Article I, Section 3, although this is what actually occurred in Claimant's case. The Agreement deals with individuals, not with positions, and the two are not synonymous. A carrier may abolish a particular position and yet not reduce its complement of employees at all, by hiring in other positions. Or it may reduce forces without abolishing positions by virtue of attrition or by cutting the extra list. Thus, notice of abolishment of positions is not the notice required in Article I, Section 3, nor is abolishment of positions anticipated by that provision.

Article IV, Section 5, establishes all the conditions under which compensation need not be given a protected employee. The following extract is relevant:

> ...nor shall a protected employee be entitled to the benefits of this Article IV during any period <u>when furloughed because of</u> reduction in force resulting from seasonal requirements...<u>or because of</u> reductions in force pursuant to Article I, Sections 3 or 4... (Underlining added.)

Thus it is apparent that <u>furloughed</u> employees, who have been laid off pursuant to Article I, Section 3, receive no benefits. But non-furloughed employees, employees who are

kept at work, cannot be deprived of their protected compensation. The quoted portion of Article IV, Section 5, plainly excludes from benefits those who are furloughed because of reduction in force, pursuant to Article I, Section 3. It does not deal with loss of protected compensation when there is an abolishment of a position.

Carrier's assumption that protected employees can be denied benefits while they work from the extra board could lead to absurd results. A junior employee on the extra list on October 1, 1964, protected under Article IV, Section 2, obviously would continue to receive his guarantee so long as he continued to work from the extra list; that is how he was protected originally and he could not be denied his protection unless he were furloughed pursuant to Article I, Section 3. Yet an employee like Claimant, who may be senior to him, bumped to the extra board, would receive no guarantee at all--although the latter may work considerably more than the former.

Reference was made by Carrier to Award No. 215 of this Committee. It is distinguishable on its face, since the denial there was predicated upon a carrier's use of employees' services in another capacity. Employees in the ticket office and related departments "were able to secure other jobs as mail handlers in the Carrier's service."

However, while Claimant moved from a regular job to the extra board from which he worked quite steadily, nothing in the record indicates that he was used "in another capacity," than his customary one. Whatever the parameters of Award No. 215, it does not suggest that protected employees may be employed to perform their customary duties and yet be denied protective benefits.

A W A R D

The Answer to Question Nos. 1 and 2 is Yes (exclusive of interest).

Milton Friedman
Neutral Member

Dated: October 12, 1972
Washington, D. C.