NATIONAL RAILWAY LABOR CONFERENCE

1225 CONNECTICUT AVENUE, N.W., WASHINGTON, D. C. 20036/AREA CODE: 202—659-9320

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November 16, 1972

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Gentlemen:

This will supplement our previous letters with which we forwarded to you copies of Awards of Special Board of Adjustment No. 605 established by Article VII of the February 7, 1965 Agreement.

There are attached copies of Awards Nos. 326 to 339 inclusive, dated November 14, 1972, rendered by Special Board of Adjustment No. 605.

Yours very truly,

J. F. Griffin

cc. Messrs. G. E. Leighty
C. L. Dennis (2)
C. J. Chamberlain (2)
M. B. Frye
H. C. Crotty
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Award No. 326
Case No. H&RE-21-W

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES TO DISPUTE) Hotel and Restaurant Employees and Bartenders International Union and Missouri Pacific Railroad Company

QUESTION AT ISSUE: Whether the Carrier is required by the February 7, 1965 Agreement to restore to protected status employees whom it deprived of protected status by the application of a pre-1965 schedule rule reading as follows:

> "An employe who does not perform any service within the scope of this agreement for a period of twelve months shall be dropped from the seniority roster and his employment relation terminated."

and whether the Carrier is required to pay the employees the compensation to which they have been entitled under the February 7, 1965 Agreement as protected employes.

OPINION OF BOARD:

In Award No. 318 (Case No. H&RE-18-W), this Board held that a provision[1/] in the schedule Agreement did not, in and of itself, deprive an employe of protection under the terms of the February 7, 1965 Agreement where the employe did not work the requisite time through no fault of the employe.

In Award No. 319 (Case No. H&RE-19-W), the Board found that notwithstanding its conclusions in Award No. 318, the Organization by agreement could waive its rights under the February 7, 1965 Agreement.

In the instant dispute, the Board is called upon to determine whether (1) a similar provision in the schedule agreement should be construed differently from that provision in Award No. 318, and (2) if not, were the rights of this specific Claimant waived as a result of the Board's finding in Award No. 319.

1/ "An employe who, on account of reduction in force, has not performed sixty (60) days' service during a period of twelve (12) consecutive months will be dropped from the seniority roster." (Underscoring added.)

As to the first question: Rule 15(c) of the schedule agreement between the parties states:

> "An employe who does not perform any service within the scope of this agreement for a period of twelve months shall be dropped from the seniority roster and his employment relation terminated." (Underscoring added.)

Carrier points out that unlike the provisions of the agreement in Award No. 318 (see Footnote No. 1), Rule 15(c) provides for the termination of the employment relationship. If the employment relationship is terminated (as distinguished from merely being dropped from the seniority roster), Carrier argues, the February 7, 1965 Agreement has no operative effect and the employe loses whatever protection he may have had. In support of its position, Carrier cites a number of awards of this Board differentiating between "employment relationship" and "seniority." The awards cited by Carrier, however, are not relevant to the resolution of the question involved herein.

Within the limited purview of the question to be resolved in this dispute, there is no distinction between "termination of employment relationship" and "dropped from the seniority roster." The rationale of Award No. 318 is applicable here. However, it is our holding that Rule 15(c) was amended by the February 7, 1965 Agreement to the extent that such employee did not lose his seniority or his employment relationship, and his obligation to perform service under the February 7, 1965 Agreement must still be fulfilled.

As to the second question: Carrier asserts that even though the letter agreement of March 18, 1966 (the same as that involved in Award No. 319) did not specifically mention Claimant by name, that such agreement recognized the application of Rule 15(c) to all employes on the seniority roster and not just the employes listed on the attachment to the agreement. The Board does not agree. It is the Board's finding that the March 18, 1966 agreement affected only the 13 employes specifically set forth in the attachment to the agreement. It did not affect the rights of those employes not listed.

AWARD

The answer to both parts of the Question at Issue is in the affirmative.

Nicholas H. Zumas
Neutral Member

Dated: November 14, 1972
Washington, D. C.