AWARD NO. 342
Case No. SG-32-E

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES ) The Chesapeake and Ohio Railway Company
TO THE ) and
DISPUTE ) Brotherhood of Railroad Signalmen

QUESTION
AT ISSUE:

(a) Carrier violated current provisions of the February 7, 1965 Agreement, particularly Section 1 of Article 1, and Sections 2 and 6 of Article IV, when Claimant /E. T. Toothman/ was furloughed close of vacation day November 12, 1971; and, as a result,

(b) Carrier should hereafter offer Claimant employment equivalent to his base period as defined and contemplated in Section 1 of Article I, and Section 2 of Article IV; and that

(c) Carrier provide us with Claimant's base period of compensation earned during the last twelve months in which he performed compensated service immediately preceding the date of the Agreement - February 7, 1965; and that

(d) Carrier compensate Claimant for all loss of earnings which are less than his protected monthly base rate due under Section 2 of Article IV. In addition, Carrier should make necessary payments in order to make Claimant whole for any and all loss, including payments towards his Railroad Retirement, C&O Hospital Association dues, Travelers Insurance, and credit for loss of time toward vacation and/or holidays; and

(e) Inasmuch as this is a continuing violation, said claim is to cover period of time until Carrier takes necessary corrective action to comply with the above violations.

Note: This is a companion claim to one filed on December 3, 1971, with Asst. to Vice-President Labor Relations D. S. Garda, which we understand to be the procedure required by the November 24, 1965 Interpretations relating to the February 7, 1965 Mediation Agreement.

OPINION
OF BOARD: Claimant, a protected signal employee, was furloughed during the strike of longshoremen and coal miners in November, 1971. The Organization contends that Carrier has not established justification for this action under Article I, Section 4, of the February 7 Agreement. Carrier maintains that this provision of the Agreement supports the layoff.

Article I, Section 4, permits force reductions in emergencies, such as strikes. It also conditions force reductions on the provisos "that operations are suspended in whole or in part," and that the work "no longer exists or cannot be performed." The Agreement consequently does not anticipate that, whenever there is an emergency, carriers may use it as the basis for furloughing protected employees. Not the emergency as such authorizes the layoff, but compliance with the provisos. All of Article I, Section 4, must be applied and each requirement must be met. These are factual matters which must be established by evidence, not by assertion, conjecture or probability.

Otherwise, whenever there were an emergency, a carrier could use it as a device to reduce forces of protected employees who otherwise must be retained in compensated service under Article I, Section 1. Hence the significance of the requirement that the work no longer exists and cannot be performed. For, if there is no established disappearance or diminution of work due to the emergency, protected employees must continue to be compensated.

Carrier's letter of February 2, 1972 simply asserts:

> ...The furlough of Mr. Toothman was the direct result of the Carrier's operations being impaired and/or suspended as result of the strike of the coal miners and the strike of the Longshoremen at the East Coast ports. Such furlough was made under the conditions set forth in Section 4 of Article I of the February 7, 1965, Agreement...

Nothing was submitted in evidence to establish what specific effects the strike had on the need for Signalmen. The evidence does not even indicate how long the strike lasted and when the "emergency" ended. Carrier's submission noted a

decline from about 21 trains to 12 in the division in which Claimant worked. It was said that the reduction in trains caused the reduction in the need for Signalmen and that 6 of the 32 positions, including Claimant's, were abolished.

Although Carrier contends generally that a reduction in trains produces a parallel reduction in signal maintenance requirements, which the Organization disputes, evidence on the point was not submitted. Questions of the relationship between the two were not resolved either on the property or in the submissions.

Specific evidence is needed to establish what the strike's effect was on the need for signal employees. This is mandatory in order to prove that the work no longer existed, in fact, or could not be performed, in fact.

There was no adequate answer to the General Chairman's letter of February 16, 1972, which stated, in part:

> ...Carrier's operations were not suspended as a result of emergency conditions listed therein occurring on the property. Furthermore, the alleged suspension of Carrier's operations was not to the extent that claimant's work no longer existed or could not be performed. A strike by coal miners and longshoremen did not cause claimant's work to no longer exist or prevent it from being performed...

Particularly with a craft like this, Carrier must show more than a decline in the number of trains to justify fewer signal employees. Obviously a decline in the need for employees may occur without an emergency. Yet Carrier's obligation to protected employees persists. What Carrier must do, but did not in this case, is to actually show the connection between the emergency and the reduction in force by reference to the disappearance of the work or to the possibility of doing it.

But so long as trains run, even in lesser number, and signals operate, Carrier cannot reduce forces of protected employees simply because a strike has produced a decline in business. It proves nothing that Carrier has laid off employees and still manages without them. Protected employees must be kept on, unless the work disappears in an Article I, Section 4, situation, and it is the latter which must be proved.

All that Carrier did on the property was to quote the requirements of Article I, Section 4, and note the existence of two strikes. It then asserted that "the Carrier's operations were suspended in whole or part." Where, when and how remain unidentified.

Carrier points to Rule (b) of the collective-bargaining agreement:

> The number of assistant signalmen and assistant signal maintainers on a seniority district shall be consistent with the requirements of the service and the signal apparatus to be installed or maintained.

That provision has significance for the number of employees Carrier ordinarily must employ. It is not applicable to protected employees for whom compensation is mandatory, even if there is no work for them. The only exceptions in their cases are to be found in the February 7 Agreement.

In various crafts the number of employees required during a strike may be proportionately related to the number of trains running. That is not the case of this craft. In Article I, Section 4, an automatic equation of fewer trains and less signal maintenance needs is not applicable, unless it is proved that the work is not there to be performed.

The claim therefore should be sustained. Claimant is entitled to compensation for the period he was laid off, from November 13, 1971, until he was recalled to service. However, this Committee has no jurisdiction over other claims cited in Paragraph (d).

AWARD

Carrier shall compensate Claimant at his protected rate from the date of his furlough, which was effective

November 13, 1971, until the date his protected compensation was restored.

Milton Friedman
Neutral Member

December 18, 1972
Washington, D. C.