AWARD NO. 445
Case No. CL-135-W

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES TO THE DISPUTE ) Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes
and
The Atchison, Topeka and Santa Fe Railway Company

QUESTIONS AT ISSUE:

1. Did the Carrier violate Article I, Section 3, of the February 7, 1965 Mediation Agreement, as amended, effective January 1, 1980, when it failed to include those off-in-force-reduction employes who had filed notice under the provisions of Rule 17-C(6) or Rule 17-C(2) as among the number of protected employes for the month in which the decline in business formula was calculated?

2. Shall the Carrier now be required to recalculate the decline in business formula pursuant to Article I, Section 3, and include those employes who filed notice pursuant to Rule 17-C(6) or 17-C(2) as protected employes?

3. If the Carrier is required to recalculate the number of protected employes to be reduced pursuant to Article I, Section 3, for the months in which the decline in business formula was applied, shall those employes that were reduced in error be compensated for their loss of protective benefits?

OPINION OF THE BOARD: During late 1981, the Carrier experienced a substantial decline in business triggering the provisions of Article I, Section 3 of the February 7, 1965 Job Stabilization Agreement as amended. Article I, Section 3 provides:

> "In the event of a decline in the Carrier's business in excess of 5% in net revenue ton miles in any calendar month compared with the average of the same calendar month for the preceding two calendar years, the number of protected employes, excluding those whose protective status has been

> suspended, will be reduced to the extent said decline exceeds 5%. When the number of protected employes is reduced as provided for herein, the junior protected employes will not be entitled to protective benefits. Upon restoration of Carrier's business employes entitled to protective benefits under this Agreement shall have such rights restored in accordance with the same formula within 15 calendar days."

The parties' disagreement centers on the Carrier's method of calculating the reduction in the number of protected employees. Article I, Section 3 permits the Carrier to exclude all employees "...whose protective status has been suspended..." from the aggregate amount of protected employees before calculating the number of junior protected employees who would, for the duration of the business decline, not be entitled to protective benefits.

The Carrier subtracted those off-in-force-reduction employees who filed Rule 17-C(2) and 17-C(6) notices from the total number of protected employees. The Carrier reasoned that since an employee who files a Rule 17-C notice limits his recall rights, the employee's protection is suspended.

The Organization argues that filing a Rule 17-C recall limitation does not automatically suspend a worker's protection. Consequently, these employees remain protected and should be included in Carrier's Article I, Section 3 force reduction computations.

We decided in Award No. 444 that the mere act of filing a Rule 17-C(2) recall restriction does not activate a conclusive presumption that the employee's protection is suspended under Article II, Section 1. While it is likely that a strong correlation exists between the employee's voluntary

election to limit his recall area and the ultimate suspension of his protection, the relationship is only speculative at the time a protected worker makes a Rule 17-C(2) filing. Consequently, when making its calculations under Article I, Section 3, the Carrier cannot exclude off-in-force-reduction employees who have filed a Rule 17-C(2) and (6) notice based solely on the theory that the filing itself is tantamount to a suspension of protection.

In Award No. 444, this Board explained when such workers suffer a suspension in protective benefits. Once employees incur a suspension in benefits per Award No. 444, the Carrier is free to deduct those employees from gross number of protected employees before computing the reduction in the number of protected employees.

AWARD

The Answers to Questions 1 and 2 are "Yes, to the extent consistent with our Opinion." Question 3 is remanded to the property per our Opinion and Award No. 444.

John B. LaRocco
Neutral Member

Dated: July 29, 1987