AWARD NO. 448
Case No. CL-130-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 restored the protective benefits to Claimants listed herein and failed to compensate them for the full month in which their benefits were restored?

2. Shall the Carrier now be required to compensate the Claimants listed below for an additional fifteen (15) days of protective benefits for each month in which their protective benefits were restored according to the provisions of Article I, Section 3?

L. A. Vasilievas	J. Durkin
C. Grayson	T. J. Reed
D. E. Kennard	N. J. Hawes
B. Rosemont	B. J. Loughnane
R. D. Hernandez	E. L. Lewis
D. E. Squires	R. D. Martinez

OPINION OF THE BOARD: The parties amended the February 7, 1965 Job Stabilization Agreement effective January 1, 1980. Revising the language of Article I, Section 3, the parties changed the decline in business formula. The pertinent part of the original contract read: "Upon restoration of Carrier's business following any such force reduction, employees entitled to preservation of employment must be recalled in accordance with the same formula within 15 calendar days." The January 1, 1980 Agreement substituted the following sentence: "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."

During the last quarter of 1982 and the first half of 1983, the Carrier's business fluctuated. Due to a business decline, the Carrier invoked Article I, Section 3, resulting in the suspension of Claimants' protective benefits. Eventually business improved sufficiently requiring the Carrier to reinstate Claimants' protection. During the first month of increased business, the Carrier compensated Claimants for fifteen days of protective benefits.

The issue concerns the timing of the restoration of Claimants' protective benefits.

The Organization charges that the Carrier misread and misapplied the last sentence of the Article I, Section 3 amendment to the February 7, 1965 Agreement. The Organization submits that since protective benefits are suspended on a monthly basis, benefits must be restored monthly "...in accordance with the same formula..." In this case, the Organization asserts that the Carrier is deviating from the formula to reap a windfall by arbitrarily withholding benefits for fifteen days. The Carrier misinterprets Article I, Section 3 by confusing the restoration of rights with paying protective benefits. The Organization reads the last sentence of Article I, Section 3 as setting the outer time limit for the Carrier to actually pay monthly protection after calculations are completed for the particular month.

The Carrier, on the other hand, contends that a right to protective benefits must first be established before employees are entitled to receive the monetary benefit. Also, the Carrier argues that the Organization waived its right to protest the Carrier's method of reinstating protective benefits since the Organization failed to grieve the Carrier's protective benefit reinstatement calculations for months prior to August, 1982. The Organization, the Carrier concludes, acquiesced to the previous method of applying Article I, Section 3.

The ambiguous language in the final sentence of Article I, Section 3 is susceptible to differing interpretations. When analyzing unclear contract provisions, this Board must consider any relevant past practice and the negotiating history. Also, we must derive an interpretation which reasonably gives effect to all the language in the contract. The Organization's construction of the last clause in Article I, Section 3 would be plausible if the drafters of the agreement had placed a period after the word "formula." Then, the terms "...in accordance with the same formula..." would have governed the timing for restoring benefits as well as the number of employees whose protection is reinstated.

The original Article I, Section 3 language also contained a fifteen day provision requiring the Carrier to recall an employee within fifteen days after restoration of business. Presumably, the Carrier was not required to compensate a furloughed employee from the first date of the month but rather commencing when the employee was actually restored to service.

The negotiators of the January 1, 1980 amendment chose not to restore protection at the beginning of the month but rather chose to preserve the fifteen day delay. Under the amended Article I, Section 3, the fifteen day period applies to restoring rights instead of recalling workers. Retaining the fifteen day provision supports the Carrier.

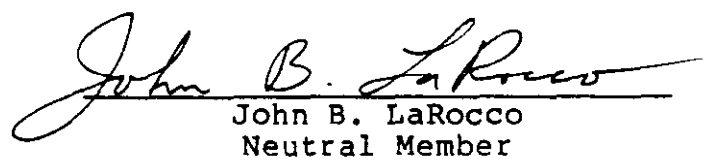
While the record does not contain evidence of a long, well entrenched past practice, the Organization acquiesced with the Carrier's application of Article I, Section 3 prior to August, 1982.

Finally, the Organization raises strong equitable arguments that protective benefits should resume at the beginning of the month since such benefits are suspended on a monthly basis. This Board, however, does not sit to dispense equity between the parties. We are confined to interpreting and applying the Agreement.

In sum, restoring protection resurrects an employee's entitlement to protective benefits. The right must be restored within fifteen days after the increase in business and then the Carrier is obligated to pay benefits.

AWARD

The Answers to Questions 1 and 2 are "No."



John B. LaRocco
Neutral Member

Dated: July 29, 1987