AWARD NO. 462
CASE NO. CL-152-W

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES TO THE DISPUTE ) Transportation-Communications International Union and The Atchison, Topeka and Santa Fe Railway Company

QUESTIONS AT ISSUE:

1. Has an extra protected employe who missed two (2) calls and laid off sick, with proper cause, on one (1) other occasion, when called for extra work "engaged in a consistent pattern of conduct of refusing to accept calls to perform extra work" within the meaning of Award No. 16, Case No. H&RE-1-E, of Special Board of Adjustment No. 605?

2. Should Carrier be required to restore protection to C. Grayson and compensate her for all loss of compensation as a result of Carrier rescinding her protection on September 16, 1985?

3. Should Carrier be required to pay 18% per annum interest on the amount due C. Grayson as a result of said loss?

OPINION OF THE BOARD: Claimant, an off-in-force-reduction employee who has attained protective status under the February 7, 1985 Mediation Agreement, as amended, holds an October 18, 1977 seniority date on the Chicago Terminal Division Station Department Seniority District.

On September 16, 1985, the Regional Freight Office Manager revoked Claimant's Rule 14-B notice of availability because she missed two calls and marked off ill when called once during August, 1985. Specifically, Claimant missed calls to perform extra work on August 2 and 29, 1985. On August 4, 1985, Claimant did not accept a call because she was ill. The record does not reflect how many times the Carrier called Claimant to protect extra work during

August, 1985, although the Carrier asserted that it called Claimant an average seven times per month during 1985.

In Award No. 458, this Board extensively discussed the guidelines for determining the level of employee unavailability which justifies the suspension of his protective status under Article II, Section 1 of the amended February 7, 1985 Job Stabilization Agreement as well as agreed-upon Question and Answer No. 4 (under Article II).

While the Carrier stresses that Claimant was unavailable on seven days from August 1, 1985 through December 31, 1985, it focused solely on the three instances she failed to protect extra work during August, 1985. We cannot express any opinion on whether or not Claimant's pattern of unavailability subsequent to August, 1985 would warrant rescission of Claimant's notice of availability. The Carrier may properly consider the number of times Claimant misses or refuses calls compared with the number of times she was called in August, 1985. Instead, the Carrier mechanically applied its policy of revoking employees' notice of availability when they are absent, for any reason, three times within thirty days. As we ruled in Award No. 458, the Carrier's rigid, quantitative formula for determining when employee unavailability becomes unacceptable is contrary to the guidelines in Question and Answer No. 4. Also, the Carrier disregarded Claimant's good and sufficient reason for failing to respond to the August 4, 1985 call. Thus, this Board concludes that Claimant did not evince a consistent pattern of refusing to protect extra work over a reasonable period of time.

For the reasons more fully set forth in Award No. 458, the Carrier improperly suspended Claimant's protected status.

AWARD

1. The Answer to Question No. 1 is No.

2. The Answer to Question No. 2 is Yes.

3. The Answer to Question No. 3 is No.

John B. LaRocco
Neutral Member

Dated: November 7, 1988