

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES) Hotel and Restaurant Employees and Bartenders
TO) International Union
DISPUTE:) and
The New York Central Railroad Company

QUESTION AT ISSUE: The question at issue is whether an extra employee, protected under Article I, Section 1 of the February 7, 1965 Agreement, can lose his protection because of absence from Carrier's service in that he was not available for an extra assignment, or extra assignments.

OPINION OF BOARD: Article II, Section 1 of the Mediation Agreement provides, in pertinent part, that "an employee shall cease to be a protected employee in case of his ... failure to accept employment as provided in this Article". Section 3 of said Article declares that when a protected employee is entitled to compensation under the Mediation Agreement (as was each of the employees here involved) "he may be used in accordance with existing seniority rules for ... temporary assignments which do not require the crossing of craft lines." Article I, Section 1 defines protected extra employees, in part, as those who are expected to respond when called.

Pursuant to the provisions of Article VII, Section 3 of the Mediation Agreement, this Board must confine its decisions to those specific questions submitted to it. The specific question here presented is couched in general terms. Thus the Board's answer to the question posed must, of necessity, also be given in general terms.

We find, therefore, that where the facts of a particular case establish that an extra protected employee has engaged in a consistent pattern of conduct of refusing to accept calls to perform extra work without proper cause, such employee may lose his protected status under the Mediation Agreement by reason of the application of Section 1 of Article II. This for the reason that we consider an extra employee to be "An employee" as that term is used within the context of the aforesaid Section 1.

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AWARD

Under the conditions stated in the Opinion, an extra employee can lose the protection afforded by Article I, Section 1 of the February 7, 1965 Mediation Agreement.

REFEREES:

Lloyd H. Butler
William H. Churn
David J. Lind

Washington, D. C. - December 19, 1967