Award No. 26
Case No. CL-9-W

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES TO DISPUTE) Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees and Western Pacific Railroad Company

QUESTIONS AT ISSUE:

(1) Did the Carrier violate the provisions of the February 7, 1965 Agreement, particularly Article I, Section 1 and Article IV, Section 1, when it removed Mr. G. W. Fischer, Jr. from the position of Rate Analyst on June 15, 1965 and refused to thereafter compensate him at the normal rate of compensation of the position to which he was regularly assigned on October 1, 1964?

(2) Shall the Carrier be required to compensate Mr. G. W. Fischer, Jr. at the normal rate of compensation of the position to which he was regularly assigned on October 1, 1964, commencing with June 16, 1965 and for each date thereafter?

OPINION OF BOARD:

A brief summary of the facts indicate that the Claimant was appointed to the position of Rate Analyst on October 1, 1960--one which is excepted from promotion, assignment and displacement under the Rules of the effective Agreement. Thereafter, on June 15, 1965, the Claimant was relieved of his assignment, allegedly due to inefficiency. In due course, by virtue of the normal exercise of his seniority, the Claimant displaced a junior clerk at a lower rate of pay. The difference in compensation amounted to approximately $96.00 per month.

The pertinent portion of Section 3, Article IV, provides as follows:

> "Any protected employee who in the normal exercise of his seniority bids in a job ---- will not be entitled to have his compensation preserved-----."

Thus, the basic issue posed herein is whether such can be considered a voluntary action?

In support of its argument, the Carrier urges that we adhere to the precedent previously established by this Board in Award No. 13. In that Award, the Board held that the disqualified employee who bid in on a lower rated position had voluntarily exercised his seniority. Unquestionably, consistency in interpreting Agreements is essential, otherwise, issues would never be resolved. We are cognizant

of the fact that the significance of precedent as stare decisis in the adjudication of arbitral matters is debatable and contentious. N theless, logic impels us to be guided by a previous decision whic settled an issue involving the same parties under the identical A unless palpably in error. True, under a different factual situat the one presented here, we probably would have been more reluctai follow the previous Award. Therefore, under the circumstances pi herein, in our view, this Claim warrants a denial.

Award

Answer to Questions 1 and 2 is in the negative.

Murray M. Rohman
Neutral Member

Dated: Washington, D. C.
January 24, 1969