## SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES ) Brotherhood of Maintenance of Way Employes TO THE ) and

DISPUTE:) St. Louis Southwestern Railway Lines

QUESTIONS (a) Are Messrs. H. P. Dean and J. E. Phelps
AT ISSUE: protected employees as contemplated within
Article I, Section 1 of the February 7, 1965
Agreement

## and

(b) Should Messrs. H. P. Dean and J. E. Phelps be returned to active service.

OPINION The two employees had been in active service on OF BOARD: October 1, 1964, and qualified for protected status. They were furloughed on December 31, 1964. In accordance with the rules then in effect, they chose not to displace junior employees, but complied with the requirements for retaining their seniority. Carrier did not recall them to service on March 1, 1965, on the ground that both of them had failed to exercise displacement rights within ten days after December 31, 1964, in accordance with Article II, Section 1.

During March, 1965, the Employes requested Carrier to restore the two men to service, but the request was denied. The matter was appealed to the Manager Personnel, the highest officer of the Carrier handling such claims. The appeal requested restoration of protected status and pay for time lost. Carrier denied the appeals in June, 1965, and in August, 1966, advised the Employes that further action on the claims was barred, since they had not been appealed to a tribunal within nine months. The Employes did not present the matter to the Disputes Committee until October, 1967.

The threshold question is whether the Employes have lost their rights to appeal to this Committee because the ninemonth time-limit rule was not observed.

Significantly, the submission filed by the Employes with this Committee makes no reference to a claim for compensation. The issues presented are limited to whether the two men are protected employees and whether they should be returned to active service. Thus, although the claim made on the property

originally sought compensation as well, the questions submitted to this Committee are purely ones of interpretation of the February 7, 1965 Agreement and no more. This is acknowledged in Carrier's submission.

Where claims for compensation are involved, timelimit rules are to be applied, according to the Interpretations of November 24, 1965. But where the question solely concerns the meaning or interpretation of the Fébruary, 1965, Agreement, time-limit rules are specifically waived. By abandoning the compensation aspect of the claim, the Employes have presented the issue in such a way that a determination on the merits is not barred by the lapse of time.

With respect to the substantive issue, Article I, Section 1, of the Agreement of February 7, 1965, defines the requirements necessary for one to be a protected employee: Employees "will be retained in service" if they were in active service on October 1, 1964, if they had at least two years of employment relationship, and if they had at least 15 days of compensated service in 1964. Messrs. Dean and Phelps qualified on this score. Section 1 also states that "such employes who are on furlough as of the date of this Agreement will be returned to active service before March 1, 1965." The two employees were on furlough on February 7, 1965, but they were not returned to active service by March 1.

Carrier relies on Article II, Section 1, which describes how "an employe shall cease to be a protected employe." One such cause is failure to exercise seniority rights to obtain an available position. According to Carrier, protected status can be lost prior to February 7, 1965, because the date for acquisition of protection was fixed as October 1, 1964.

However, October 1, 1964, is used only to measure who will be protected by the February Agreement. If October 1, 1964, had been the effective date on which protection was acquired, obviously there could have been no subsequent furloughs of protected employees. The Agreement provides that employees furloughed after October 1, 1964, "will be returned to service." This obligation is flat and unqualified. No deprivation of protected status was envisaged for furloughed, qualified employees if prior to February 7, 1965, they complied with the rules in not displacing a junior employee. The provision that protected status "shall cease" was designed to describe how such status is lost after February 7, 1965, the date it became operative.

## AWARD

The answer to Questions (a) and (b) is "Yes."

Milton Friedman, Referee