

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES ) Chicago, Milwaukee, St. Paul & Pacific Railroad Company  
TO THE ) and  
DISPUTE ) Brotherhood of Maintenance of Way Employees

QUESTIONS AT ISSUE: (1) Did the Carrier violate the Mediation Agreement dated February 7, 1965, Article I, Section 1, when it failed to return Machine Operator Eugene W. Murphy to his position as a Machine Operator on the Rocky Mountain Division on March 1, 1965 and

(2) Should Machine Operator Eugene W. Murphy now be compensated at his applicable rate of pay for each work day lost from March 1, 1965 to March 28, 1965.

OPINION OF BOARD: Claimant qualified as a protected employee and was furloughed in a force reduction on January 8, 1965. He was not returned to active service before March 1, 1965. When he was furloughed, he filed his name and address to retain his seniority. Under Rule 9(c), he could have exercised his seniority to obtain a position within 30 days. The 30-day period expired on February 7, 1965, the date of the Agreement.

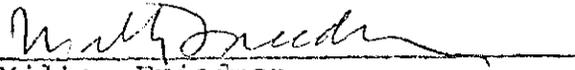
Article II, Section 1, provides that "an employee shall cease to be a protected employee in case of his...failure to retain or obtain a position available to him in the exercise of his seniority rights." On February 7 Claimant was a protected employee and this section was applicable to him as of that date. Not having obtained a position through the exercise of seniority on February 7, which fell within the 30-day period when he could have done so, he thereby lost his protected status.

Article II, Section 1, does not have retroactive effect (Award No. 63), but it must be applied on February 7, 1965, since that is the date on which the Agreement became operative. This Committee lacks authority to amend the Agreement by deferring the application of a provision beyond the date upon which it became operative.

AWARD No. 103  
Case No. MW-13-W

A W A R D

The answer to Questions 1 and 2 is  
"No."

  
Milton Friedman  
Neutral Member

Dated: Washington, D.C.  
June 10, 1969