AWARD NO. 105
Case No. MW-1-E

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES TO THE DISPUTE ) Lehigh Valley Railroad Company and Brotherhood of Maintenance of Way Employes

QUESTION AT ISSUE: Did the guaranteed compensation of Mr. Clayre E. Matz effective April 1, 1965 continue to be $472.18 per month or was it reduced to $2.4408 per hour?

OPINION OF BOARD: In accordance with an agreement between the parties dated August 25, 1958, Claimant's rate as Foreman was preserved although he was downgraded to Laborer. Carrier contends that under the October 7, 1959, Mediation Agreement this guarantee was lost when the Employes failed to specify its continuation. However, allegedly by error, Claimant continued to receive Foreman's rate until April 1, 1965, following the agreement of February 7. On April 1, the allowance was discontinued.

Claimant is a protected employee. Article IV, Section 1, of the February 7, 1965, Agreement provides that protected employees "shall not be placed in a worse position with respect to compensation than the normal rate of compensation for said regularly assigned position on October 1, 1964." On that date, Claimant was working as a Laborer, but receiving Foreman's rate pursuant to the 1958 Agreement.

This issue must be decided in accordance with Article VI, Section 4, which provides as follows:

> Where prior to the date of this agreement the Washington Job Protection Agreement (or other agreements of similar type whether applying inter-carrier or intra-carrier) has been applied to a transaction, coordination allowances and displacement allowances (or their equivalents or counterparts, if other descriptive terms are applicable on a particular railroad) shall be unaffected by this agreement either as to amount or duration, and allowances payable under the said Washington Agreement or similar agreements shall not

be considered compensation for purposes of determining the compensation due a protected employee under this agreement.

The "amount or duration" of allowances such as that which had been granted to Claimant are "unaffected" by the February 7 Agreement, according to the above-quoted provision. Section 4 neither guarantees continuance of such allowance nor authorizes discontinuance. The allowances are simply outside the 1965 Agreement's purview.

Section 4 does say explicitly, however, that "allowances payable...shall not be considered compensation for purposes of determining the compensation due a protected employee under this agreement." What the February 7 Agreement considers compensation due a protected employee is what is specified in Article IV, Section 1: the "normal rate of compensation for said regularly assigned positions." The regularly assigned position of Claimant is, without question, that of Laborer. The "normal rate of compensation" is that which the Carrier has paid since April 1, 1965.

The extent of this Committee's authority is the February 7 Agreement and no more. It cannot make an award of an allowance "which shall not be considered compensation for purposes of determining the compensation due a protected employee under this agreement." It can award only the compensation which a protected employee is guaranteed by the 1965 Agreement. That is the position's normal rate.

Consequently, the claim is not properly before this Committee, but must be handled in another tribunal, in accordance with the rules.

A W A R D

Claim dismissed.

Milton Friedman
Neutral Member

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