Award No. 151
Case No. SB-18-W

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES TO DISPUTE) Brotherhood of Railroad Signalmen and Chicago, Rock Island and Pacific Railroad Company

QUESTIONS AT ISSUE: Did Carrier violate the implementing agreement of June 30, 1966 when it failed to apply the provisions thereof to all signal employees affected by the reorganization which that agreement was negotiated to cover?

Shall Carrier now be required to pay C. A. Beck, Richard Howard, W. A. Tinney and all non-protected employees the $150.00 allowance provided for in Section 6 of the June 30, 1966 Implementing Agreement?

OPINION OF BOARD: On June 30, 1966 the parties entered into what was captioned a "Memorandum of Agreement". That agreement was a result of certain reorganization plans proposed by Carrier and objections thereto by the Organization. The basis for the Organization's objections was that the reorganization plans would be in violation of current Signalmen's Agreement and Article III of the February 7 Agreement.

Certain portions of the "Memorandum of Agreement" refer specifically to the schedule agreement and other portions refer specifically to the February 7 Agreement.

The claim in this dispute arises because Carrier has refused to provide a moving allowance provided for in Section 6 of the "Memorandum of Agreement" on the grounds that the Claimants were non-protected employes as defined by the February 7 Agreement.

The issue as set forth by the Organization is whether Carrier violated the June 30, 1966 Agreement "when it failed to apply the provisions thereof to all signal employes affected by the reorganization which that agreement was negotiated to cover?"

Stated another way: Did the June 30, 1966 Memorandum of Agreement grant to non-protected employes any benefits they would not otherwise have been entitled to under the February 7 Agreement?

The Organization takes the position that since there was nothing in the "Memorandum of Agreement" which excluded non-protected employes or distinguished non-protected from protected employes, all of the provisions were applicable to all of the employes.

It is clear that the February 7 Agreement was intended to

apply to protected employes only (Award No. 50), even though this Board has jurisdiction to determine the relative rights of protected and non-protected employes as they are affected by the February 7 Agreement (Awards No. 91 and No. 111).

There is nothing to prevent the parties in a supplemental agreement from granting to non-protected employes the same benefits as those granted to protected employes, either by employing similar language as that found in the February 7 Agreement or specifically including non-protected employes and incorporating those applicable February 7 Agreement provisions by reference.

We cannot assume that the parties mutually agreed and intended that those portions of the June 30, 1966 Agreement which referred to the February 7 Agreement covered both non-protected and protected employes. Failure to distinguish between the two categories of employes in the Agreement is not sufficient to constitute an intention to provide benefits to those employes not otherwise entitled.

AWARD

Absent agreement between the parties this Committee does not have authority to grant benefits to non-protected employees similar to those granted to protected employees under the February 7, 1965 Agreement.

Nicholas H. Zumas
Neutral Member

Dated: Washington, D. C.
November 12, 1969