

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES) Hotel and Restaurant Employees and Bartenders
TO) International Union
DISPUTE) and
Union Pacific Railroad Company

QUESTIONS
AT ISSUE:

(a) Whether an extra protected employee who was not available for work on one, two or three occasions over an extended period of time 'has engaged in a consistent pattern of conduct of refusing to accept calls to perform extra work without proper cause' within the meaning of Award No. 16, Case No. H&RE-1-E, SBA No. 605;

(b) Whether or not the Carrier should be requested to restore protection to Ellsworth Jefferson, Jimmy L. Johnson, Paul Elligan, Francis Murray, Ved C. Evans, Joseph Pipkins, Alphonso Brown and James O. Minton and compensate these employees for all loss of compensation as a result of the Carrier forfeiting their protection.

OPINION
OF BOARD:

Claimants were protected extra employees under the provisions of the February 7 Agreement. On one or more occasions each of the Claimants failed to respond to calls. As a result Carrier notified each of the Claimants that as a result of his failure to be available for service, he had lost his protective status under the February 7 Agreement.

The Organization contends that Carrier's action was not justified because the facts in each Claimant's case show that there was no "consistent pattern of conduct of refusing to accept calls" as is required by Award No. 16.

Award No. 16 dealt with the question of whether an extra protected employee lost his protected status for failing to respond to a call for extra work. There the Board found that:

" * * * where the facts of a particular case establish that an extra protected employee has engaged in a consistent pattern of conduct of refusing to accept calls to perform extra work without proper cause, such employee may lose his protected status under the Mediation Agreement by reason of the application of Section 1 of Article II."

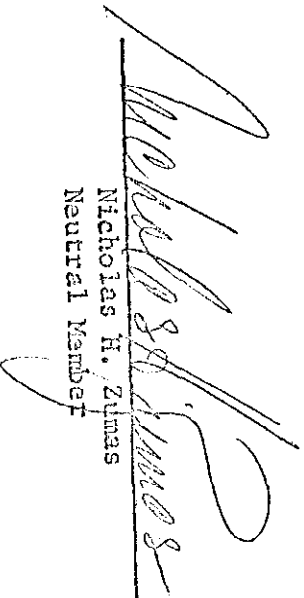
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Thus, under the findings of Award No. 16, "unavailability" in and of itself is insufficient. The record, in order to warrant a loss of protective status, must show a "consistent pattern of conduct of refusing to accept calls " * * * without proper cause".

An examination of the facts and circumstances surrounding the unavailability of the Claimants fails to show that there was "a consistent pattern of conduct of refusing to accept calls to perform extra work without proper cause", and therefore, Claimants should be restored to their protective status. Accordingly, Claimants are entitled to loss of compensation, if any, as a result of Carrier's action.

AWARD

The answer to the first question at issue is in the negative; and the answer to the second question at issue is in the affirmative.


Nicholas H. Zumas
Neutral Member

Dated: Washington, D. C.
January 7, 1969