AWARD NO. 200
Case No. SG-28-E

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES TO THE DISPUTE) Penn Central Transportation Company and Brotherhood of Railroad Signalmen

ISSUE IN DISPUTE: Claim No. 1: System Docket No. 618 - Pittsburgh Division 188

(a) Claim that the Company violated Article I, Section 4 of the Agreement of February 7, 1965, when it failed to notify the employes of C. & S., Seniority District No. 13 that it was suspending operations and positions; thereby causing these employes to report for work at their respective starting time, Monday, July 17, 1967.

(b) Claim that each and every one of the employes listed below be paid eight (8) hours at the straight time rate of their respective positions for Monday, July 17, 1967 account of the violations cited in Claim (a) above:

Lorenz, J. N.	- Insp. C&S	Himes, G. B.	- M't'r. C&S
Montgomery, R. L.	- Ldg. M't'r.	Kilgore, G. E.	- Signalman
Anthony, J. D.	- M't'r. Test.	Mohney, D. V.	- Signalman
Dotterer, J. E.	- M't'r. C&S	Adams, J. W.	- M't'r. C&S
Texter, W. H.	- M't'r. C&S	Adams, K. H.	- M't'r. C&S
Barnett, J. K.	- M't'r. C&S	Hollobaugh, A. L.	- Helper C&S

Claim No. 2: System Docket No. 619 - Pittsburgh Division 187

(a) Claim that the Company violated Article I, Section 4 of the Agreement of February 7, 1965, when it failed to notify the employes of C. & S. Seniority District No. 13 that it was suspending operations and positions; thereby causing these employes to report for work at their respective starting time, Monday, July 17, 1967.

Dissent follows

(b) Claim that each and every one of the employes listed below be paid eight hours at the straight time rate of their respective positions for Monday, July 17, 1967 account of violations cited in Claim (a) above:

Kalinowski, S. L.	- Insp. C&S	Shoup, W. E.	- M't'r. C&S
Coward, H. B.	- Insp. C&S	Templeton, M. M.	- M't'r. C&S
Staniscia, G. B.	- Insp. C&S	Sarver, D. F.	- M't'r. C&S
Braun, U. J.	- Forem'n. C&S	Frederick, J. E.	- M't'r. C&S
Diven, H. G.	- Ldg. M't'r.	Steeves, B. R.	- M't'r. C&S
Templeton, T. C.	- Ldg. M't'r.	Staniscia, Victor	- Signalman
McCrossin, J. D.	- M't'r. Test	McAfee, R. L.	- Asst. Sig'l'mn
Dailey, L. W.	- M't'r. Test	Brosium, G. J.	- Asst. Sig'l'mn
Dunning, D. R.	- M't'r. C&S	Carbonetti, P. D.	- Asst. Sig'l'mn
Bennett, R. D.	- M't'r. C&S	Skomo, Joseph	- Helper
Young, M. C.	- M't'r. Test	Broncwicz, E. L.	- Helper
Putze, A. R.	- M't'r. C&S		

OPINION OF BOARD: Article I, Section 4, provides in part, as follows:

> Notwithstanding other provisions of this Agreement, a carrier shall have the right to make force reductions under emergency conditions such as flood, snowstorm, hurricane, earthquake, fire or strike, provided that operations are suspended in whole or in part and provided further that because of such emergencies the work which would be performed by the incumbents of the positions to be abolished or the work which would be performed by the employees involved in the force reductions no longer exists or cannot be performed. Sixteen hours advance notice will be given to the employees affected before such reductions are made...

A strike of shop-craft employees was threatened for July 17, 1967. On July 16, Carrier posted a notice on

bulletin boards to employees represented by more than a dozen organizations advising that existing positions would be temporarily suspended beginning at 12:01 A.M. on July 17 for the duration of the strike. The notice advised employees that they would return to their regular positions upon the end of the strike. The strike ended in a day and work was resumed on July 18.

Positions were not subject to bulletining as they would have been if they had been abolished. Both parties had agreed to the procedure for suspension of positions rather than abolishment, in order to avoid the disruption and disorganization which would result if all positions were thrown open for bid. This understanding was embodied in a letter drafted by the Carrier's Manager-Labor Relations, dated July 14, and sent to the General Chairman. Although a place was left on the letter for the General Chairman's signature under the words, "I concur," the General Chairman did not sign and return it. But the substance of the understanding was unchallenged.

The Employes contend that Carrier failed to give the notice specifically required by Article I, Section 4, of the February 7, 1965, Agreement when forces are reduced as the result of a strike. Postings on bulletin boards rather than direct notification to the affected employees does not meet the Agreement's requirements, it was said.

According to Carrier, the notice was adequate, and it was posted at least 16 hours in advance of the time that any of the Claimants was due to report. Carrier also relies heavily upon a series of related awards of this Committee, Nos. 115, 116, 117 and 118, all concerning the same situation on other railroads, and all of which upheld the carriers' position and denied the claims.

Article I, Section 4, of the Agreement permits a carrier to reduce forces of protected employees under emergency conditions, upon 16 hours' advance notice. In Carrier's view, since the positions involved were temporarily suspended rather than abolished, notice is not required. But Section 4 contains no distinction between temporary suspensions and the abolishment of positions. A force reduction by some other name does not change the obligation to give notice.

The February 7, Agreement guarantees compensation to protected employees. Compensation may be terminated or suspended only in circumstances specifically set forth in the Agreement, not otherwise. Article I, Section 4, describes one condition which permits carriers to lay off protected employees. It does not contain any rationale for avoiding the notice requirement. The notice is a condition precedent to all layoffs which are based on this provision. There is no other interpretation or construction to which Section 4 is susceptible.

As to the form of notice, posting on bulletin boards does not satisfy the requirements of Section 4, which provides that "notice will be given to the employees affected." Posted notice, when employees are off duty and not apprised of it, does not satisfy the mandate that it "be given" to them.

To the extent that Award No. 115 was predicated on the temporary suspension of positions rather than their abolishment, it failed to take the actual language and evident intent of the Agreement into account. Such distinction does not appear in Section 4, which permits force reductions only after notice. If Section 4 were not the source of Carrier's action, then a force reduction of protected employees due to a strike was not permissible at all. Not a word in this provision anticipates that carriers could lay off protected employees without notice, whether positions are temporarily suspended or abolished.

The sentence requiring notice stands alone, unlimited and unqualified, and must be applied to all Section 4 layoffs. To hold otherwise is to confuse an absolute mandate with extraneous concepts not found in the Agreement or in the parties' obvious intent. It would be unwise and unjustifiable to compound oversight or palpable error in a previous award by following it and creating a longer line of such precedents.

A W A R D

Claim No. 1 and Claim No. 2 are sustained.

Milton Friedman, Neutral Member

Washington, D. C.
January 20, 1970

DISSENT OF CARRIER MEMBERS OF SPECIAL BOARD OF ADJUSTMENT NO. 605 TO AWARD NO. 200 (CASE NO. SG-28-E) - AGREEMENT OF FEBRUARY 7, 1965

SG-28-253

The Carrier Members of this Board are of the opinion that Award No. 200, Docket SG-28-E, Referee Milton Friedman, does not represent a proper interpretation of Article I, Section 4 of the February 7, 1965 Agreement and we must, accordingly, dissent.

The primary issue covered by this case was previously resolved by our Awards 115, 116, 117 and 118, favorable to the Carrier's position. Those cases held, in essence, that where the contracting parties mutually agreed to suspend positions effective with the commencement of a strike, the provisions of Article I, Section 4 requiring sixteen hours advance notice had no application. This, for the obvious reason that the purpose of the rule had been served by the mutual understanding.

In this case the mutual understanding was reflected in the letter dated July 14, 1967, and as the Referee now states: "the substance of the understanding was unchallenged." The July 14th letter contained the following statement:

> "This confirms our understanding that except as the employe may be otherwise notified, all existing positions will be temporarily suspended effective at the beginning and for the duration of the strike." (Emphasis supplied)

This understanding was clearly intended to eliminate any further contractual requirement for advance notice to the employes of the suspended positions. The only exception was that contained in the understanding itself. The contracting parties agreed when the suspension would be effective, to wit: "in the event of a strike by Shop Craft employes subsequent to 12:01 A.M. on July 16, 1967" and "at the beginning and for the duration of the strike."

The Referee finds that Article 1, Section 4 of the February 7th Agreement allows Carrier to reduce forces of protected employes under emergency conditions. The Carrier can do this unilaterally providing it gives the prescribed notice. However, the differences between the Carrier's unilateral abolishment of positions with the concomitant responsibility of fulfilling the sixteen hours notice, as distinguished from a suspension of positions by contractual understanding, was a difference which the Referee who rendered Awards 115, et al, could understand and accept. The rationale of Awards 115, et al, is bottomed on the singular fact that there is a sharp distinction between a suspension of positions by agreement and abolishment of positions by the unilateral act of management.

This same distinction is that which underscores the difference between the facts of this case and the facts of those awards cited by the Organization, from the Third Division. The Referee's failure to grasp that distinction served as the underpinnings for his error in this case.

It should be obvious that the contracting parties have a perfect right to agree to suspend positions - on and as of a date fixed by a condition subsequent - i.e., when the strike occurs - and such a suspension, by mutual understanding, was clearly intended to relieve Carrier of the obligations imposed by the February 7th Agreement.

The Referee's decision on the question of whether notice posted on a bulletin board meets the requirements of Article I, Section 4 and his conclusion that it did not, is also in error. Here again, a decision from the same property involving the same parties, was determinative of the issue. Award 7241, Third Division, submitted to the Referee, concluded on this precise question, as follows:

> "Claimants have pointed out that oral notice was received by them some hours after the official, posted notice. Some were notified directly at 7:00 P.M., May 9; others were given such personal notice at 8:00 A.M., May 10, and a few received such notice as late as 10:00 A.M., May 10. The Agreement does not specify that personal or oral notice is essential. And it is not for us to add such a stipulation." (Emphasis supplied)

We have added the emphasis because it is quite apparent the Referee ignored that basic admonition in this case. Moreover, the Referee's attention was invited to Award 14997 (Third Division), from the same property, which held that:

> "Under the circumstances, it is clear that Claimant's position was not 'abolished' in the strict sense. It was, pursuant to the terms of the agreement, suspended and unfilled for the duration of the strike.
>
> "Further, the Claimant had 'constructive notice' of the agreement, and such notice was all that was required."
> (Emphasis supplied)

Moreover, the claimants had more than constructive notice of the Agreement to suspend positions in this case. The General Chairman was given a copy of the notice and was advised in the July 14th letter it was to be posted on all bulletin boards. If this was not in compliance with the February 7th Agreement as later argued by the Organization, or in accordance with the mutual understanding of the parties, the General Chairman had an obligation then to so state. His failure to do so, should have been considered by the Referee as a relevant factor in determining whether proper notice was given.

It is the Carrier Members' belief that Award 200 fails to make a convincing case for refusing to follow the prior precedent on this Board and unfortunately it has only succeeded in creating further controversy and dispute on an issue which had presumptively been put to rest.

For these reasons, we dissent.

J. W. Crain
Carrier Member

M. E. Parks
Carrier Member