

AWARD NO. 234
Case No. SG-29-E

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES) New York, Susquehanna and Western Railroad Company
TO THE) and
DISPUTE) Brotherhood of Railroad Signalmen

QUESTION

AT ISSUE: Claim that Carrier improperly abolished the position held by Signalman J. E. Whitaker and R. Scarneccha effective at close of tour of duty October 4, 1968, and the Signalman position held by V. Brosnan effective at close of tour of duty January 16, 1969, and should now be required to allow them all compensation and other benefits due under the provisions of the February 7, 1965 Agreement.

OPINION

OF BOARD: In all material respects this issue is identical with that decided by Award No. 164. However, a question has been raised concerning Carrier's right to an offset for other earnings by Claimants, including earnings in other departments of the railroad. In that connection Award 34 is cited to show that an employment relationship entitling employees to benefits of the February 7 Agreement can be established by service in non-union areas of Carrier. Under those circumstances, it was said, earnings in such work should appropriately be deducted from Carrier's liability for Claimants' preserved compensation.

The February 7 Agreement is specific in setting forth Carrier's obligation to protect employees. Carrier must preserve their compensation under this Agreement, not under other agreements or by virtue of outside work whether on the railroad or elsewhere. Aside from any question as to the intrinsic soundness of Award 34, there is no basis for extrapolating it to a case like this, governed specifically by Article I, Section 1, of the February 7 Agreement. Had

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there been any intent to offset, as urged, such an approach would not have been overlooked inadvertently by the drafters of this Agreement.

Award 18132 of the Third Division upheld the same claims on the ground of timeliness. The Organization asserts it has no intention to seek dual payments. The Third Division's Award sustained payments to Claimants Whitaker and Scarnecchia until March 21, 1969, and to Claimant Brosnan until June 2, 1969, and compensation thereafter is awarded.

A W A R D

Claim sustained for the periods subsequent to those specified in Third Division Award 18132.


Milton Friedman
Neutral Member

Dated: January 19, 1971
New York, New York

