

AWARD NO. 278
Case No. MW-52-W

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES) The Denver and Rio Grande Western Railroad Company
TO THE) and
DISPUTE) Brotherhood of Maintenance of Way Employes

QUESTIONS
AT ISSUE:

1. Was the Carrier justified in dropping Work Equipment Operator J. R. Carlson "from the Protected Employees List, effective March 11, 1970"

and, if not

2. (a) Shall Mr. J. R. Carlson be restored to his proper status as a seasonal protected employe
and
(b) Shall Mr. J. R. Carlson be compensated for all loss of earnings suffered as a result of his improper removal from the protected list?

OPINION

OF BOARD: The issue is whether a seasonal protected employee must respond when recalled at the start of the season or may invoke Rule 13 of the seniority rules and report "within fifteen (15) calendar days from date recalled." That provision in the seniority rules is entitled "Recall to Service" and concerns the period within which an employee must report upon recall or else forfeit his seniority rights.

Claimant was recalled on March 11, 1970, and he advised Carrier that since he had 15 days in which to report, he would be available on March 24. (Actually another position closer to his home became available and he occupied it on March 23.) The parties disagree on whether or not Carrier acquiesced in Claimant's request for time to report. The allegation made by Claimant was denied and proof of any such agreement is lacking.

AWARD NO. 278
Case No. MW-52-W

The Organization relies upon Article II, Section 1, of the February 7 Agreement which provides that an employee loses protected status if he fails to "obtain a position available to him in accordance with existing rules." Since there is a rule permitting a furloughed employee 15 days in which he can respond, it was said, Claimant was justified in the delay.

Carrier cites Question and Answer No. 4 on Page 9 of the Interpretations dated November 24, 1965. It deals with the phrase in Article II, Section 1, concerning the obligation of a furloughed employee to respond to extra work when called. The Answer emphasizes that obligation, although it notes the need to handle "isolated incidents" on an equitable basis. However, the Answer ends with the following sentence:

Seasonal employes must respond when offered employment as provided in Article I, Section 2. (Underlining added.)

There are logical reasons why a protected seasonal employee must respond at the time he is called during the season if he is to be afforded protection. The Organization's suggestion that Carrier need not pay him for a delay in reporting begs the question since he is needed for seasonal purposes when called, just as a furloughed employee is needed promptly when called for extra work.

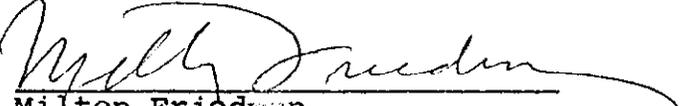
Moreover, the clause relied upon by the Organization in Article II, Section 1, is not attached to the provision obligating employees to respond when called. It refers to the failure of an employee to retain or obtain a position by the exercise of his seniority "in accordance with existing rules," which is altogether different from the obligation to heed a call by management. Indeed, the succeeding words in Article II, Section 1, are clear and specific. They provide without qualification for loss of protected status for "failure to accept employment as provided in this Article." A seasonal employee who must be offered employment during what necessarily

AWARD NO. 278
Case No. MW-52-W

is a limited period of the year must accept it when it is offered, in accordance with the Interpretation on Page 9, or else he has failed to comply with Article II, Section 1.

A W A R D

The answer to Question No. 1 is Yes.


Milton Friedman
Neutral Member

Dated: Washington, D. C.
November 17, 1971