AWARD NO. 281
Case No. TC-BRAC-111-W

PARTIES) Illinois Central Railroad Company
TO THE) and
DISPUTE) Transportation-Communication Division, BRAC

QUESTIONS
AT ISSUE:

1. Did Carrier violate Article V of the February 7, 1965 Agreement and Memorandum of Agreement dated July 26, 1966, when it denied a lump sum separation allowance to Mrs. M. F. Nelson?

2. Does Mrs. Nelson possess the fifteen or more years of employment relationship, as that term is defined, necessary to qualify her for a separation allowance?

3. Shall Carrier now be required to pay Mrs. Nelson the lump sum separation allowance afforded under Article V of the February 7, 1965 Agreement?

OPINION
OF BOARD: Carrier raises a jurisdictional question. Two agreements on the property dated July 26, 1966, and November 12, 1968, are involved, it was said, and therefore the matter belongs before the Third Division. Since the second of these agreements was executed subsequent to Claimant's resignation on November 13, 1967, it is not germane to this dispute. However, the July 26, 1966, agreement ensures the Article V benefits of the February 7 Agreement and a claim under it consequently is reviewable by the Committee.

A definition of "employment relationship," as that term is used in Article V, is necessary to decide the issue. It must be determined whether or not Claimant, whose tenure had once before been broken by resignation, has the 15 years of employment relationship required for a separation allowance.

Claimant, a protected employee, was originally hired on October 8, 1951, and resigned June 1, 1953. She was rehired less than two months later. When stations were consolidated in 1967 she resigned and requested severance pay. At that time her last period of continuous employment was more than 14 years. Her total service with Carrier, including that before and after the hiatus in 1953, was about 16 years.

Under Article V an employee with "fifteen years or more of employment relationship" is entitled to a separation allowance "computed in accordance with the schedule set forth in Section 9 of the Washington Agreement." If the employment relationship must be consecutive and unbroken, Claimant is not entitled to the allowance; otherwise she is. According to the Organization, Claimant met the literal requirement of Article V by virtue of her two periods of employment. Carrier contends that the applicable period of employment relationship is that which followed her rehire in 1953, and it totals less than 15 years.

Carrier cites Section 7 of the Washington Agreement to support its position because Section 9, to which reference is made in the February 7 Agreement, states:

> An employee eligible to receive a coordination allowance under Section 7 hereof may... resign and...accept a lump sum separation allowance with the following schedule...

Section 9 of the Washington Agreement then lists varying separation allowances based on "length of service." Section 7, in describing who is eligible for the Section 9 benefits, states that "for the purposes of this Agreement the length of service of the employee shall be determined from the date he last acquired an employment status with the employing Carrier."

However, Article V of the February 7 Agreement does not refer to the Washington Agreement except with reference to the schedule of allowances. It is significant that the term

used in the February 7 Agreement is not "length of service," as in the Washington Agreement, but "employment relationship." If the former term had been embodied in the February 7 Agreement, then the definition of it in Section 7 of the Washington Agreement would be relevant. But it must be assumed that the drafters of Article V, who measured each word, certainly were skillful and knowledgeable enough to use precisely the same phrase if it had been intended. They chose a different one. Hence the definition of a phrase not in the February 7 Agreement is not controlling.

The February 7 Agreement does not, like the Washington Agreement, indicate that the period involved must be measured from the last date of hire. Nor does it state, as it could have, that the employment relationship must be continuous. Claimant did have more than 15 years of employment relationship, which is precisely what Article V requires. There is no further qualification, in an Agreement which is replete with qualifications, and it must be assumed that none was intended.

Awards 34 and 246 of this Committee involve employees whose periods of employment relationship were broken. Carrier notes a distinction in those cases, stating that the employees were laid off and unlike Claimant did not sever the relationship by their voluntary action. While one may have some reservation about whether, as in Award 34, a non-unit position can contribute to a period of employment relationship under this Agreement, the holdings in both cases do demonstrate that periods of employment relationship may be broken, if together they total 15 years.

In view of the earlier Awards, it is immaterial under the February 7 Agreement what the cause of the interruption was. Neither Award suggested that such distinctions might be proper and Award 34 even granted credit for employment outside the bargaining unit. Award 246 held that the employment relationship need not be continuous, that "the Carrier is seeking refuge in a non-existent word, one absent from the Agreement." There is no reason to depart from the views expressed in that Award.

A W A R D

The answer to the Questions is Yes.

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Milton Friedman
Neutral Member

Dated: Washington, D. C.
January 27, 1972