SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES TO DISPUTE) Hotel and Restaurant Employees and Bartenders International Union
and
Chicago, Rock Island and Pacific Railroad Company

QUESTION AT ISSUE:

EMPLOYEES' STATEMENT OF QUESTION AT ISSUE

The question at issue is whether or not an extra protected employee is entitled to reasonable notice before he is considered as not available for service within the meaning of Article IV, Section 2 of the Agreement?

CARRIER'S STATEMENT OF QUESTION AT ISSUE

The question at issue is whether the Carrier properly deducted the amount of $175.48 from Theodore Hayman's monthly guarantee for a period when he was not available for service within the meaning of Article IV, Section 2, of the Agreement.

OPINION OF BOARD:

Resolution of this dispute centers on the meaning and effect of that portion of Article IV, Section 2 that provides:

> "* * * if his compensation in his current employment is less * * * than his average base period compensation * * * he shall be paid the difference less compensation for any time lost on account of voluntary absences to the extent that he is not available for service * * *." (Underscoring added)

Claimant was a protected employe (Lounge Car Porter) with a protected rate of $424.33 per month.

On August 20, 1965, Claimant, according to Carrier, was called by telephone to perform service on the following day on Trains 3 and 4. There was no answer at the number called by Carrier (and designated by Claimant as his residence number.)

Carrier deducted the sum of $175.48 from Claimant's guaranteed compensation payment on the grounds that had Claimant responded to the call and worked, he would have earned the sum of $175.48 (74.8 hours at $2.346 per hour). Carrier took credit for that amount as well as $52.48 that Claimant had earned, and reduced his guaranteed compensation payment for August 1965 to $196.37.

Carrier takes the position that Claimant was not "available for service" when he failed to respond to a telephone call. (The record shows that only one attempt was made to reach Claimant.) Carrier further contends

that the responsibility on the part of Claimant to respond to a telephone call is consistent with the intent of the February 7 Agreement to protect an employe above and beyond what he might earn in available service, and to excuse Claimant for missing a call would violate the intent of the Agreement. As such, Carrier submits, an employe would simply assert that he was not at home (or not answer the telephone) and would be entitled to receive his monthly protected allowance without any effort to protect his assignment. Lastly, Carrier asserts that it was its practice (unacknowledged by the Organization) to deduct what an employe would have earned if he could not be reached.

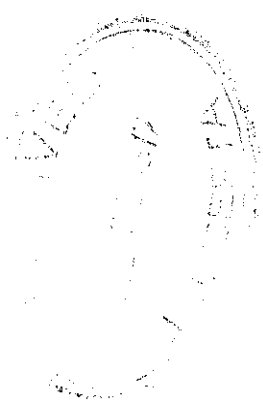
The Organization takes the position that 1) there was no evidence that Claimant was voluntarily absent or unavailable for service, and 2) Carrier's position would require that an employe's telephone be attended 24 hours a day to avoid the risk of losing compensation on the charge that he was not "available for service."

A solitary attempt to contact Claimant that was unsuccessful, without more, does not constitute a voluntary absence. Under the specific circumstances of this dispute, the deduction was improper.

AWARD

The answer to the question submitted by the Organization is in the affirmative.

The answer to the question submitted by the Carrier is in the negative.



Nicholas H. Zumas
Neutral Member

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