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

QUESTIONS AT ISSUE:

Employees' Statement of Questions at Issue:
(1) Whether or not a Carrier may deduct from a protected employee's guarantee earnings for work outside the craft.

(2) Whether or not Waiter Eugene Lewis should be reimbursed from the Carrier the sum of $20.00 earned in outside employment during the month of January, 1970, and for any monies deducted from Claimant's guarantee for work outside the craft in prior months.

Carrier's Statement of Questions at Issue:
(1) Whether or not the carrier may suspend a protected employee's guarantee, or offset against it, during any period in which he occupies a position not subject to the working agreement pursuant to Article IV, Section 5.

(2) Whether or not claims prior to January, 1970, are barred, not having been progressed under applicable time limits.

OPINION OF BOARD:

Claimant was a protected employe receiving a monthly compensation. For January 1970 he filed for compensation due and indicated that he had earned $20.00 while working with the C.Y. Thomas Company.

Carrier deducted the $20.00 from Claimant's compensation contending that under the provisions of Section 5, Article IV of the February 7, 1965 Agreement he was occupying a position "not subject to the working agreement."

Section 5, Article IV states in pertinent part:

> "A protected employe shall not be entitled to the benefits of this Article during any period in which he fails to work due to disability, discipline, leave of absence, military service, or other absence from the carrier's service, or during any period in which he occupies a position not subject to the working agreement; * * *" (Underscoring added.)

The Organization asserts that Carrier could not deduct any monies earned by Claimant on the outside citing the provisions of Section 2, Article IV and our Awards No. 53, 183 and 184.

Under the provisions of Section 2, a protected employe is to be paid his monthly guarantee "less compensation for any time lost on account of voluntary absences to the extent that he is not available for service."

OPINION
OF BOARD
(Continued): In Award No. 183 this Board held, essentially, that an employe was not entitled to compensation during the period of his unavailability, but Carrier could not deduct an additional amount equivalent to sums earned in outside employment during that period of unavailability.

Carrier urges that Award No. 183 should be distinguished from the dispute at hand because in Award No. 183 the Board was confined to the provisions of Section 2 and had no occasion to consider the provisions of Section 5; and that "Section 5, here relied upon, does allow the Carrier to suspend or mitigate an employe's guarantee, in addition to the relief provided in Section 2."

The Board does not agree. Section 2, and not Section 5, governs the compensation that may be deducted. Awards No. 53 and 183 have determined that amounts equivalent to sums earned in outside employment may not be deducted from the guarantee. The provisions of Section 5 do not contemplate instances of what may be characterized as "one-shot moonlighting" work. It is clearly not the policy or purpose of the February 7 Agreement to prohibit or discourage such work.

The claim for amounts deducted prior to January 1970, however, is barred.

AWARD

1. The answers to Questions at Issue No. 1 are in the negative.

2. The answer to Question at Issue No. 2 is that Claimant is only entitled to be reimbursed $20.00 earned during January 1970, and is not entitled for any deductions in prior months.

Nicholas H. Zumas
Neutral Member

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