AWARD NO. 368
Case No. SG-33-E

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES) Lehigh Railroad Company
TO THE) and
DISPUTE) Brotherhood of Railroad Signalmen

STATEMENT
OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Lehigh Valley Railroad Company that:

(a) Carrier improperly abolished signal employes' positions, on or about July 26, 1971, in violation of the Signalmen's Agreement and the February 7, 1965 Agreement.

(b) Carrier should be required to compensate the following fifteen affected employes for wage loss suffered, and/or reimburse them for extra expenses because the force reductions forced them to exercise displacement rights to obtain another position which required them to entail extra expenses:

1. W. Kowalow, Signal Foreman -Difference in pay between Signal Foreman and Signal Maintainer, August 9 to 25, 1971, inclusive, for 105 hours straight-time and 22 hours punitive.

2. C. P. Cannon, Signal Maintainer -Car mileage, 48 miles per day @ 9¢, certain specified days August 2 through 18, 1971 (total of 13 days).

3.	W. R. Wygrola, Signalman	-Car mileage, 90 miles per day @ 9¢, certain specified days July 26 through August 25, 1971 (total of 18 days).
4.	D. E. Allardyce, Signalman	-Car mileage, 100 miles per day @ 9¢, for a total of 5 days, July 26 - 30, 1971, and 175 miles per day for 8 days, August 16-25, 1971.
5.	W. S. Quinn, Signalman	-Pay at Signalman rate for a total of 18 days, August 2 through 25, 1971 (8 hours per day).
6.	D. N. Spigarelli, Signalman	-Pay at Signalman rate for a total of 7 days, August 23 through 31, 1971 (8 hours per day).
7.	J. E. Herda, Signalman	-Pay at Signalman rate for a total of 23 days, July 26 through August 25, 1971.
8.	L. J. Dowd, Signalman	-Pay at Signalman rate for a total of 23 days, July 26 through August 25, 1971.
9.	F. X. Jewell, Signal Foreman	-Pay at Signal Foreman rate for a total of 18 days, July 26 through August 18, 1971. Car mileage 150 miles per day @ 9¢, for 5 days, August 19 through 25, 1971.
10.	W. F. Bubick, Signal Helper	-Pay at Signal Helper rate for a total of 23 days, July 26 through August 25, 1971.
11.	G. J. Fech, Signalman	-Pay for 3 hours' riding time daily for 23 days. Car mileage 130 miles per day @ 9¢, for a total of 16 days.
12.	A. P. Brown, Signalman	-Pay at Signalman rate for 5 days.

13.	R. Azzalina, Signal Maintainer	-Pay at Signal Maintainer rate for a total of 22 days, July 27 to August 26, 1971.
14.	C. T. Heitzman, Relay Inspector	-Pay for 40 hours @ $0.0737 per hour, 10 hours @ $4.4498 per hour. Car mileage, 84 miles per day @ 9¢, for a total of 5 days.
15.	H. McPherson, Signalman	-Pay at Signalman rate for 1 day, July 26, 1971."

OPINION
OF BOARD: A variety of issues, both procedural and substantive, has been raised in the handling of these claims on the property and during the Committee's discussion.

Non-Protected Claimants

Both parties agreed that Claimant Brown is not a protected employee and consequently his claim has no standing with this Committee. The parties differ over Claimant Bubick. Since his status is uncertain and the Committee had no jurisdiction over non-protected Claimants in a case of this kind, his claim is being referred back to the parties.

PER-3 Form

Eight Claimants did not submit claims on PER-3 forms which Carrier had announced in 1965 were to be used in making claims under the February 7 Agreement. According to Carrier's highest officer, the claims of these employees were therefore improperly submitted. The Organization contends that the rules for handling claims and grievances contain no provision permitting Carrier to bind the Organization by a unilaterally adopted procedure. This issue involves Claimants Quinn, Spigarelli, Herda, Dowd, Jewell, Azzalina, Heitzman and McPherson.

In each case the first denial of the claim simply stated that "it was not presented in accordance with existing instructions." The General Chairman's appeal thereupon referred to that comment, adding that "I am at a loss to understand what is meant by 'existing instructions.'" At the next level,

Carrier's response to this point repeated the same phrase which had been questioned by the Organization. Finally, Carrier's highest officer in his denial letter referred for the first time to the failure to file claims on PER-3 forms.

Nothing in the rules agreement prescribes the particular kind of form on which a claim is to be made under the February 7 Agreement. The November 24 Interpretations require claims for compensation to be handled "in accordance with the rules." Each employee's claim sets forth a demand for compensation in specific, understandable terms. Carrier was not disadvantaged because it was submitted on a different kind of paper than had been asked for and, according to the evidence, had generally been used.

In the absence of mutual agreement on a procedure flowing from a mutually agreed contract, it cannot be held that the failure to comply with a six-year old Management directive is a ground for barring meritorious claims. Carrier has not shown that it was adversely affected by the way in which the claims were originally filed and, if there were some genuine significance to PER-3, lower levels of Management could have advised the Organization of the proper procedure instead of using the vague words about employees' failure to follow unspecified instructions. Grievance handling is not supposed to be a series of technical pitfalls to catch the unwary.

Other Procedural Issues

Claimant Kowalow as local chairman wrote on his own behalf to the supervisor on August 9, 1971, protesting suspension of his status as a protected employee and adding, "Claim for difference in pay and expenses will be submitted at end of month." The claim was described as vague by the supervisor and denied for that and other reasons.

On October 15, 1971, a specific listing of amounts due for August 9 through August 25, 1971, was submitted. It also was denied, without reference to time limits. The General Chairman's appeal of November 20 was denied on December 20 and also on January 10, 1972, again without reference to time limits. Only in the denial issued in the letter of Carrier's highest officer on May 16, 1972, was reference made to Claimant Kowalow's failure to file a timely request for compensation within 60 days.

This Claimant submitted a Form PER-3. Nothing in the record shows that it was not received within 60 days. During all the handling on the property up to the very last step, no reference was made to timeliness. If there had been a valid basis for that defense, it was effectively waived by the continued processing of the claim without reservation on timeliness.

Claimant Azzalina filed a claim on August 26, 1971, asking for a day's pay for each day he was laid off after July 27, 1971. Aside from a denial on the merits, it was denied at the lower level because it was "not presented in accordance with the existing instructions," which was the language used in connection with the eight Claimants who had not used PER-3. Also, the highest officer asserted that the claim was too vague and indefinite and referred to Article III and IV of the February 7 Agreement, although the General Chairman correctly cited Sections 3 and 4 of Article I.

However, the claim was understood at the lower levels, although denied both on procedural and substantive grounds. It was belated for the highest officer, almost nine months after the claim arose, to dismiss it as vague and indefinite when it specifically sought a day's pay for each day laid off after July 27, 1971, totalling 22 days, according to the General Chairman's November 10 letter. Claimant was justified in filing a claim when he believed he was improperly laid off, and having it applicable so long as the allegedly improper layoff continued.

Claimant McPherson filed a claim for a day's pay lost because he was displaced. It was denied on the merits in addition to the assertion that it had not been filed "in accordance with existing instructions." The claim was denied at each step without reference to any shortcoming because of a lack of specificity. However, Carrier's highest officer denied the appeal because the claim was "too vague and indefinite to be considered a valid claim," since no date was furnished.

Obviously Carrier's supervisors knew the date or they would have denied the claim on this ground, as well. Having denied it on the merits, aside from other procedural reasons, the final denial on the ground of vagueness cannot be upheld. The same is true with respect to Claimant's initial reference to "Articles III and IV," which was corrected by the

General Chairman to Sections 3 and 4 of Article I; no uncertainty existed in the minds of the lower levels of Management about the basis for this claim.

Expenses and Travel Pay

This Committee is without jurisdiction to award travel or other expenses, or to award pay for hours spent in traveling to the job because the time exceeds that normally spent.

Applicable Notice Provision

On or about July 30, 1971, Carrier advised various employees as follows:

> As you are aware the United Transportation Union is now striking ten (10) Railroads and has scheduled strikes against seven (7) additional Railroads. In addition, there is a threatened strike in the steel industry to beome (sic) effective August 1, 1971.
>
> The business of our Company has been seriously affected and additional strikes will produce a further decline in business. Thus, it will be necessary to reduce the forces consistent with the resultant curtailment or cessation of our operation in accordance with the force reduction rule applicable to such emergency conditions. Therefore your position is abolished effective 5:30 P.M., July 31, 1971.

A week later Carrier sent the following letter:

> Consistent with Section 3 of the Feb. 7th, 1965 Stabilization Agreement, this is to notify you that due to the continuing and anticipated decline in the business of this Carrier, your position remains abolished and your status as a protected employee is suspended and terminated.

The Organization contends that the first communication was under Article I, Section 4, of the February 7 Agreement, which provides 16-hours' notice of force reduction in an emergency situation due to a strike. The second communication, it was said, was a Section 3 notice, although force reductions made due to an emergency must be excluded from the calculations in measuring a Section 3 decline in business.

Carrier's position is that Section 4 is not involved in this case; the reduction in force was a product of a Section 3 decline in business, precipated by a strike, and Claimants were given appropriate notice under the applicable schedule agreement.

Except in connection with emergencies, the schedule agreement requires five-working-days' advance notice before forces are reduced or positions are abolished. Although Carrier cited strikes as a factor in the force reduction, it also referred to a decline in business. Carrier, of course, is the only one to say under which provision it is reducing forces, and its position must be accepted.

But Carrier may not give the briefer notice applicable to Section 4, when it lays off under Section 3. According to Section 4, only 16-hours' notice need be given "before such reductions are made." And "such reductions" refer to those produced by an emergency situation, where operations are suspended in whole or part, where the work no longer exists, or where it cannot be performed. Article VI of the August 21, 1954 agreement, on which Carrier relies, uses the same criteria to determine when an emergency subject to the 16-hours' provision exists.

It does not suffice for Carrier to say that forces are being reduced because of a decline in business caused in whole or part by a strike and therefore only 16-hours' notice is required. As in Article I, Section 4, of the February 7 Agreement, Article VI gives Carrier the "right to make force reductions under emergency conditions such as flood, snowstorms...or strike," provided, inter alia, operations are suspended in whole or part. No such emergency occurred, according to the record in this case, and Carrier could not properly give merely 16-hours' notice.

Consequently, protected Claimants who were laid off and received less than five-working-days' notice are entitled to compensation.

Section 3 Reduction in Forces

Although Carrier assertedly made its reduction in force under Section 3, it produced no supporting data until a considerable time after the first layoffs occurred. Question and Answer No. 2 on page 7 of the Interpretations gives no precise time when Carrier must support its claim, although layoffs of protected employees "in anticipation of decline in business" are permitted, subject to redress if the decline does not materialize.

All that the Interpretations provide is that pertinent information will be furnished "as soon as available." In this case calendar-month data, not transformed by Carrier into percentages, and without any indication either of the number of employees on the protected list or of the number subject to layoff based on the percentage decline in business, were supplied to the Organization in March, 1972. This was seven months after the reduction in force began.

The Organization in its letter to Carrier on June 14, 1972, complained of the delay in the submission of the data furnished by Carrier. It said nothing of the nature of the data and made no challenge to it either in terms of its incompleteness or because it was on a calendar-month basis rather than a 30-day period coincident with the layoff period.

Carrier contends that the data were supplied to the Organization when they became available and "there was no question raised when it was submitted." Not having been discussed on the property, it was said, this aspect of the case should not be before the Board. On the property "the employees did not refute Carrier's figures or request additional data," it was said.

The record indicates that the Organization failed, in fact, to challenge the form or content of Carrier's information. If calendar-month figures were not considered an accurate reflection of the situation, the time to have said so was on the property. The same is true with respect to Carrier's failure to calculate percentages or to show the number of employees on the protected list, and the number who would be affected by a reduction in force. On the property,

the Organization made no claim that the number of layoffs in the period involved was not justified by the percentage decline derivable from Carrier's figures, albeit they were on a calendar month rather than 30-consecutive-day period.

All that the Organization challenged on the property was the delay in submitting the figures. Carrier states that it was done when available, as the Interpretations require. In view of the vagueness of the formulation used in the Interpretations, and the fact that the Organization was not shown to have been disadvantaged, plus the fact that no earlier demand for data had been made, redress for Carrier's slowness in furnishing the information is not warranted.

Thus compensation only for the days when improper notice was given, but not for all other days on which Claimants were laid off, is due.

With respect to Claimant Spigarelli, his position was not abolished, according to Carrier; he was displaced by an employee whose position was abolished. Claimant thereupon chose to go on vacation. Although the claim is from August 23 through 31, unchallenged statements on the property show that he was notified to return to work on August 26. Carrier's assertion, that claims after August 25 were improper, was not disputed. As a protected employee, displaced from his position on August 23-25, Claimant is entitled to pay for three days. The record supports no more of the claim than that.

Guaranteed Rate Due Protected Employees

In accordance with Award No. 321, protected Claimants who suffered a diminution in rate by displacing into lower paid jobs are entitled to retention of their protected rate of compensation. Such claims are sustained.

Precedent

At the request of Carrier members of the Committee, Award 321 has been again reviewed in light of Award 215. Reconsideration does not lead to any different conclusion. Employees whose positions are abolished, and who exercise seniority to displace, are entitled to the protective benefits of the Agreement.

Award 215 may be somewhat similar, but it is apparently not the same, since it seems to deal with employees who take

different work, rather than with employees who must displace to retain protected status when their jobs are abolished.

A W A R D

1. Claim is sustained for the difference between the protected rate and the pay received by Claimants Kowalow in the amount of $63.55, and Heitzman in the amount of $2.95.

2. Claims sustained for the following Claimants laid off without adequate notice in the amount shown:

Spigarelli	- 3 days beginning August 23, 1971
Herda	- 5 days beginning July 26, 1971
Dowd	- 5 days beginning July 26, 1971
Jewell	- 5 days beginning July 26, 1971
Azzalina	- 5 days beginning July 27, 1971
McPherson	- 1 day for July 26, 1971

3. Claims of the following Claimants for expenses and travel time are denied: Cannon, Wygrola, Allardyce, Jewell, Fech and Heitzman.

4. The claim of Claimant Quinn is denied because five-working-days' notice was given to him of the reduction in force. He was notified on July 23, effective July 24, but he made claim only from August 2 on, which was after a five-day notice period.

5. Claim of Claimant Brown, a concededly non-protected employee is dismissed.

6. Claim of Claimant Bubick is referred back to the parties to determine if he is a protected employee and, if so, to grant him five-days' pay for July 26 through July 30, 1971. The Committee retains jurisdiction if his protected status is not resolved by the parties.

Milton Friedman
Neutral Member

Dated: Washington, D. C.
October 18, 1973