AWARD NO. 369
Case No. SG-34-E

SPECIAL BOARD OF ADJUSTMENT NO. 605

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

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

Claim No. 1

On behalf of the following signal employes for pay due to violations of the February 7, 1965 Agreement ---

D. E. Allardyce	)	Auto expense and room-and-board from November 29 thru December 31, 1971, and continuing until such time as restored to their original positions.
F. X. Jewell	)	
E. J. Fazekas	)	Pay for various dates, November 29 to December 15, 1971.
T. Vathis	)	Pay for various dates, November 29, 1971, and continuing until such time as they are restored to service.
H. McPherson	)	
C. Fye	)	

/This claim was discussed in conference June 12, 1972, and denied in a letter under the same date./

Claim No. 2

On behalf of J. F. Keim for eighteen (18) days' pay beginning January 26, 1972, due to being displaced by senior employe and being

unable to hold another position; this claim based on violation of February 7, 1965 Agreement. /This claim was discussed in conference July 20, 1972, and denied in a letter dated July 25, 1972./

Claim No. 3

On behalf of E. Fazekas for twenty-seven (27) days' pay at the Signal Maintainer rate, between February 24 and April 3, 1972. /This claim was discussed in conference October 9, 1972, and denied in a letter dated November 14, 1972./

OPINION
OF BOARD: Essentially these claims have the same bases and handling as those in Award No. 368 (Case No. SG-33-E). In general the holding is the same, although there are some differences in the Claimants and in the periods involved.

Abolition of position is not mentioned in Section 3, which deals with reduction in force. Although Carrier at various times on the property used both concepts, the Organization contended that the first notice, which referred to job abolition, was improper.

However, it was clear that Carrier was reducing forces. The Organization itself, during the handling on the property, as in the Local Chairman's letter of January 18, 1972, referred to "present reduction of our forces." And the General Chairman's letter quoted the Carrier as saying that "said force reduction was made."

While it is held that Carrier's notice was sufficiently explanatory, the use of the term "job abolishment" gave Carrier no right to reduce the wages of a protected employee who continued to work by displacing a lower-paid employee. There is no reference to job abolishments in Section 3 and no indication

that this provision was designed to do more than govern an actual reduction in force.

In connection with four of the claims, less than five working-days' notice preceded the layoffs, according to the dates of the notice and the effective dates of layoff. Unless the requirements for job abolishment due to an emergency were met--and they were not--an anticipated decline in business permits layoffs after notice of five working-days. Employees who were not given it are entitled to compensation, even if the layoffs themselves are proper.

Claimant Allardyce seeks automobile and living expenses. The Committee is without jurisdiction to grant such non-wage benefits and the claim must be dismissed.

Claimant Jewell was advised on November 17, 1971, that "due to anticipated decline in business" his position was abolished as of the close of business on November 26, 1971. He seeks the difference in compensation from November 29 until restored to his regular position, as well as auto expenses incurred in travelling to work.

Section 3 does not permit Carrier to reduce the rate of protected compensation of an employee who displaces another, and this claim must be sustained. Claim for auto expenses, however, must be dismissed.

Claimants Fazekas and Vathis were laid off on November 27, after Carrier had given notice on November 24 that their positions were abolished "due to anticipated decline in business." Figures on the decline in business were subsequently supplied by Carrier in support of its action. Neither their adequacy nor their accuracy was challenged on the property, even though they did not, in fact, accord with the data anticipated by the Interpretations.

On the property the Organization had originally asserted that Section 3 "does not provide for anticipated loss of business." This view was subsequently modified. However, since the Organization accepted figures supplied by Carrier without protest, it must be assumed that they reflected a decline in business sufficient to warrant the layoff of Claimants. Otherwise they should have been challenged on the property and the matter resolved there. Consequently, the claims must be denied, except for pay in lieu of appropriate notice.

Claimants McPherson and Fye received similar notification on November 24, 1971, effective November 27, 1971. The facts are similar to those in the cases of Fazekas and Vathis.

Claimant Keim was displaced from his Signal Helper position at Lehighton, Pennsylvania, on January 26, 1972. On February 1, Carrier advised him that, due to anticipated decline in business, his "status as protected employee has been suspended effective January 26, 1972." Consequently, although he was a protected employee, Claimant was not working or paid from January 26 for a total of 18 days.

Obviously an employee cannot be given retroactive notice of a force reduction. Therefore, Claimant is entitled to compensation as a protected employee from the date he was deprived of pay until the effective date after appropriate notice of his layoff was given.

Notice of a reduction in force under Article I, Section 3, must be "advance notice," and five working days' advance notice is required under the rules agreement. This claim specifies each day when Claimant was deprived of work and of pay. Since Carrier's supporting data submitted on the property were not thereafter challenged as insufficient, compensation is due only for the days preceding the notice and for five working days thereafter, or from January 26 through February 8, 1972.

Claimant Fazekas was recalled on December 15, 1971, following his earlier layoff on November 29, and he worked until February 23. He was then laid off again, and this produced the present claim. As in the other cases, the claim is predicated on the failure of Carrier to establish cause for layoff under Article I, Section 3, but in view of Carrier's unchallenged data supplied to the Organization, it must be held that justification for the reduction in force existed. Consequently, the claim must be denied.

The record is barren of any information about a notice period at the time of this layoff, and no Award is made on that subject.

AWARD NO. 369
Case No. SG-34-E

AWARD

1. The claims of Claimants Allardyce and Jewell for auto and living expenses are dismissed.

2. Claimant Jewell shall be paid the difference between his protected rate and the rate he actually received from November 29, 1971, on, so long as he occupied a lower-paying position.

3. The claims of Fazekas (2 claims), Vathis, McPherson and Fye for protected compensation are denied, except that each man shall be given 5-days' pay in lieu of notice, less any days on which work was available to him between the date he was given notice and the end of the 5-working-day period.

4. Carrier shall pay Claimant Keim for 10 days at his protected rate.

Milton Friedman
Neutral Member

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